



STATE BOARD OF EQUALIZATION

May 23, 1960

M--- B--- Corporation
XXX East XXth Street
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-XXXXXX

Attention: Mr. R--- A. D---
Secretary

Gentlemen:

This will acknowledge your letter of April 25, requesting an opinion as to the application of the California Sales and Use Tax Law to a purchase by M--- B--- Company from W. R. G--- & Co. of certain property situated in California. This property consists of the assets and business of the F--- and K--- division of G---. This division's business is principally providing advertising space on outdoor advertising structures. It did, however, sell cut-outs or embellishments to advertisers. The division held sellers' permits at eight locations, and also from time to time sold such items as paint, used furniture and fixtures, autos and trucks, stores, etc. We answer your specific questions as follows:

- (1) The sale is properly reported on the return filed by the general office of the F--- and K--- division of G--- which is located in --- ---, to which permit --- - XXXXXX is issued. The applicable local tax is the tax imposed by the sales and use tax ordinance of the City and County of --- --- and will be distributed to that jurisdiction.
- (2) That portion of the sales proceeds allocable to advertising structures in place and constituting real property at the time of sale is not subject to either State or local tax. This property will be deemed to include structures, whether erected on leased property or on property owned by G---. We understand these structures consist of heavy vertical members embedded five to fifteen feet in concrete or other foundation material. It also includes signs and other advertising on buildings. We believe, however, that any sign affixed to a building in such a manner that the sign is readily removable as a unit so as to constitute "fixtures" under Ruling 11, copy enclosed, should be treated as personal property for purposes of the sales tax if, at the time of sale, the owner is a lessee of the building and has the present right of removing the sign.

(3) We do not concur with your contention that the sale of that portion of the assets constituting tangible personal property may be regarded as an exempt occasional sale. In our opinion, the fact that the divisions made substantial sales of cut-outs and embellishments, paint, used furniture and fixtures, autos and trucks, stores, etc., prevents the final sale from being regarded as other than one in a series of sales. Thus, the final sale is within the exception provided for in Section 6006.5(a) of the Sales and Use Tax Law defining "occasional sale". We do not believe that the cases cited in your letter are contrary to this conclusion. People v. Cal-Manor Distributors, Inc., a Superior Court case, is not, in our opinion, sound authority or in point and has been virtually overruled by subsequent decisions of higher courts. Among these decisions are the Sutter Packing Company and Pacific Pipeline Construction Company cases cited in your letter.

You state, "In the present case, the sale by G--- to M--- is sufficiently different from prior sales of used equipment, etc., by G--- so as not properly to be linked to such prior sales". The prior sales, as set forth above, are rather diversified in themselves. You do not specifically state in your letter the nature of the personal property involved in the case in question, but it would appear to us that where sales of a variety of items were made, the final sale of items used in the advertising business in which the items previously sold had also been used could well be regarded as a sale constituting one of a series of sales along with the sales previously made. We find nothing in the cases inconsistent with this view.

In Bigsby v. Johnson, 18 Cal. App. 2d 860, the California Supreme Court, after quoting the language of the statute imposing the tax upon receipts from sales "of all tangible personal property", said: He [plaintiff] can claim no exemption merely by virtue of the fact that the sale of used printing equipment was not the kind of retail sale ordinarily made by him". In the later case of Northwestern Pacific Railroad Co. v. State Board of Equalization, 21 Cal. 2d 524, after stating that the Bigsby case was not distinguishable, and quoting the above-quoted statement from the Bigsby case, the Supreme Court then said:

"It [plaintiff] contends, however, that the sales of rolling stock here involved were unrelated to its other sales and represented casual and isolated sales wholly incidental to its railway business as distinguished from its retail sales business. The trial court erred in accepting this contention. While for reasons considered desirable plaintiff corporation may departmentalize its business, it cannot by such process set up for tax purposes a distinction between the types or kinds of sales made by it where the effect would be to cause some of its sales to escape the tax aimed at all such sales. Specific sales of a retailer cannot be segregated from the bulk of its sales and treated separately as isolated or occasional sales."

We find no disapproval of this reasoning in either the Sutter Packing or Pacific Pipeline cases cited in your letter. To the contrary, the Supreme Court in Pacific Pipeling said:

“Although they involved sales prior to the enactment of section 6006.5 the following cases are directly in point, for they involved essentially the same question that section 6006.5(a) presents, namely, was the sale one of a series of sales sufficient in number, scope and character to constitute an activity requiring the seller to hold a seller’s permit. In fact, the words of the statute ‘number, scope and character’ were apparently taken from this court’s opinion in Northwestern Pacific R. R. Co. v. State Board of Equalization, 21 Cal. 2d 524, 529.”

Furthermore, inasmuch as F--- and K--- Company is only a division of W. R. G--- & Co., we believe that it is pertinent to consider not only the prior sales made by the F--- and K--- division, but any sales made by W. R. G--- & Co. of tangible personal property wherever located.

It is our view, accordingly, that the tax applies with respect to the receipts from the sale of the business properly attributed to the tangible personal property located in California at the time of the sale.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:tl
Enc.

cc: W. R. G--- & Co.
X --- Square
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Attn: Mr. K. A. L---
Treasurer

cc: --- ---
--- --- - Administrator