STATE BOARD OF EQUALIZATION

July 28, 1965

Gentlemen:

We have reviewed your letter of June 17, 1965 and appreciate your views on this matter. As you point out in your letter, we feel that your handling of reels and cases is analogous to the situation in H. J. Heinz Co. v. State Board of Equalization, 209 Cal. App. 2d 1.

In your comparison of your situation and that in the Heinz case, items 1 and 2 point out that Heinz did not necessarily know to whom they would ship their product, but you do; and that the Heinz product was generally stored in California for less than a few months. Item 3 points out that your reels and cases are not discarded and that their ultimate use is at the point where projection takes place.

Although these are probably significant points, and worthy of consideration, we feel that they are not the fundamental points upon which this case must be decided.

On page 5 of the Heinz case (cited as 209 Cal. App. 2d 1), the court states:

> "IN addition to the 'use', the State points out, the process of filling of the containers is to be considered a 'use', and that also occurred in California."

The court later states:

> "The first use was a process - - virtually momentary in point of time, but important to prepare and protect for subsequent handling. The second use was a form of storage. Its duration is of no great significance, except to illustrate that it was for the business convenience of the taxpayer."

The court then explains:

> "We believe that the only reasonable construction of section 6009.1 is that it only intends to exclude from the tax property which is purchased and as so purchased is transported out of the state for use there. However, this does not mean that appellant can fill the cans with tomato paste and escape taxation of the container because by

> filling the cans with tomato paste appellant has used the cans for a purpose other than merely transporting them outside the state for use outside the state."

In the last quotation we draw your attention to the words "as so purchased" and the words "because by filling the cans with tomato paste appellant has used the cans."

We believe, and we think reasonably so, that filling the cans with tomato paste must be equated with filling the reels with film. In the Heinz case the taxpayer "used" the cans to hold the tomato paste, and in your case you "use" the reels to hold the film. We feel that it must be conceded that this is a use of the reel within the holding of that case.

In holding that the cans were not processed, fabricated or manufactured into, attached to or incorporated into the tomato paste, the Heinz case refers to Luer Packing v. State Board of Equalization, 101 Cal. App. 2d 99 [224 P.2d 744]. You will note that in the Luer case, in dispelling the allegation that the casings become an integral part or component part of the wiener, the court did not reflect on the later removal of the casings; it disallowed the contention on the basis of how much of the casing became integrated into the meat of the wiener. In your case, according to your letter, the film is simply wound onto the reel and later placed in a protective case. The reel never becomes part of the film. It is simply a matter of protective and mechanical convenience. As the court said in the Heinz case, a "business convenience of the taxpayer." The film can be removed from the reel and the case without changing the film itself. In fact, during projection it is removed from the case and unwound from one reel, at least as far as projection requires, and rewound onto another reel.

We find no way in which we can say that the reels and cases in question are exempt from the Sales and Use Tax Law.

In regard to your desire to pay the use tax on purchases from "G", we are enclosing a copy of ruling 75. Under that ruling, purchasers to whom the use tax applies are required to pay that tax to the person from whom the property is purchased if the person from whom the property is purchased holds a seller's permit or a certificate of registration – use tax. "G: is within this category; therefore, it must be required to collect the tax and pay it to the California State Board of Equalization.

On the other hand, you letter indicates that you are aware of an audit in progress with "G". In the event that it is determined that "G" is liable for any tax with respect to sales to your firm which have, in fact, been paid by you, there is a possibility of an adjustment being made in that audit. If within 30 days from the date of this letter, we have received a schedule, along with substantiating data and documentation, of tax paid on purchases from "G", that schedule will be considered in arriving at any final amount that is held to be payable by "G". Since the audit in progress apparently covers the dates from 9/11/57 to 3/31/65, and since all sales made to your firm are apparently included in the audit, any purchases by your firm on which you have paid the tax during those dates would be appropriately included in the schedule.

In connection with the last sentence in your letter, your firm is probably a person directly interested in a determination against "G" and therefore would be entitled under Section 6561 of the Revenue and Taxation Code to petition for redetermination. Such petition must be filed within 30 days after service upon "G".

We trust this will satisfy your inquiry, and if we can be of any further service, please do not hesitate to contact us.

Very truly yours,

Lawrence W. Rideout
Associate Tax Counsel

LWR:dse [lb]