



200.0124

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 445-6450

June 13, 1973

REDACTED TEXT

Attention: REDACTED TEXT

Gentlemen:

This is in belated reply to your letter of May 9, 1973, discussing the "interest" problem.

Necessarily, I must agree that the Peterson case does not involve the precise situation which may confront your client. But it is the only case directly concerned with the taxability of "interest" charges for sales and use tax purposes. From our point of view, the important aspect of the Peterson case is the conclusion that denominating a charge an "interest" charge will not thereby exempt it for sales and use tax purposes although the charge may relate to a financial cost of the seller of goods.

As I see it, the court's opinion is that the "interest" charge did not result from the preceding lease. Consequently, the charge could only be attributable to the following sale. Because all receipts from the sale must be included in the measure of tax unless a specific exemption or exclusion is applicable, and Peterson could show no such application, the receipts must be included in the measure.

Of particular interest is that Peterson could not show that the questioned interest charge was a consequence of a sale on credit and thereby excluded as explained by ruling 61 (a) (ruling 61 is now regulation 1641).

In the contemplated contract, your client's coins will not be "sold on credit" as the term is used in regulation 1641. At the time of sale, the price will be fully paid. The seller is then extending no credit to its customers because it is not transferring goods in return for a promise to pay at a future time.

As we see it, your client's position is that at the time the coin agreement becomes binding, the customer then assumes a liability for payment of a (maximum) amount. Assuming, arguendo, that the liability is unqualified, that the seller could call for its payment at any time, and that the "interest" accrues until it is paid, such a liability could

be considered a debt and the incremental payments for the delayed payment of the debt considered "interest" payments.

But we cannot agree with the further assumption that an amount termed an "interest payment" is excludible from the measure of tax on a sale of tangible personal property when the charge is not attributable to a credit sale of the tangible personal property, notwithstanding the "interest" charge arose in a transaction which involved a sale of goods. We believe that the Peterson case is an authority for that view.

Very truly yours,

Philip R. Dougherty
Tax Counsel

PRD/vs