



STATE BOARD OF EQUALIZATION

January 27, 1955

Your letters of December 1, 1954
and January 24, 1955
Account: REDACTED TEXT

REDACTED TEXT

Attention: REDACTED TEXT

Gentlemen:

You request our advice as to whether sales tax is due on the following transaction. You entered into a contract with REDACTED TEXT whereby you agreed to deliver one new lathe on the basis of REDACTED TEXT paying one-third of the total cost of the machine on delivery and the balance in equal installments. The lathe was delivered February 23, 1954. The amount agreed to be paid at this time was not paid. You cancelled the contract and repossessed the machine. To clear your records you credited the customer's account on your books with the full amount of the contract price less the amount of damages shown in your suit for breach of contract in the amount of \$2,260.76.

The first problem is whether there was a sale as that term is used in the Sales and Use Tax Law. Section 6006(e) defines a sale as including "a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price." Under this section a sale of the lathe to REDACTED TEXT took place even though you may have reserved security title upon delivery of the property to REDACTED TEXT. See opinion of the Attorney General, 10875, August 8, 1936.

Section 6012 of the Sales and Use Tax Law defines gross receipts which are the measure of tax as including the total amount of the sale price valued in money whether received in money or otherwise. The total amount of the sale price includes any amount for which credit was allowed by the seller to the purchaser. Thus, the total amount of the sale price of the lathe would be includible in gross receipts.

It might be noted that Section 6012 excludes from gross receipts the sale price of property returned by customers when the full sales price is refunded either in cash or in credit. In your case, you did not refund the full amount of the sales price since you have filed suit for damages for breach of contract in an amount in excess of \$2,200.

Accordingly, we think that the transaction which you present is subject to sales tax.

Yours very truly,

John H. Murray
Associate Tax Counsel

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