



STATE BOARD OF EQUALIZATION

September 15, 1965

Gentlemen:

Your letter of August 25 addressed to our San Jose District office has been referred to this office for reply. You question the application of sales tax to what the "G" company designates as "going concern" value and "severance costs".

The sales tax is measured not by value, but by gross receipts from the sale, which is the amount agree to be paid for the property transferred. Section 6012 of the Sales and Use Tax Law defines "gross receipts" to include the total amount of the sale price without any deduction on account of "(b) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense", and also provides that the sale price includes "(a) Any services that are a part of the sale." Excluded from the definition of gross receipts is "(c) The price received for labor or services used in installing or applying the property sold." (Emphasis added.)

From this, it appears that the "severance costs" amount simply to one of the seller's expenses, which would not be deductible from gross receipts. The so-called "going concern" value, which you state is an estimate of a fictional value, is, nevertheless, part of what is agreed to be paid and as such appears to us to be within the definition of gross receipts.

We assume that at least a part of the property which you are purchasing from "G" consists of transmission or distribution lines. Although these have always been treated as personal property, commencing September 17, of this year, by virtue of passage of AB 1086 at the 1965 session of the Legislature transmission and distribution lines in place will cease to be personal property for sales and use tax purposes. They will be real property, the sale of which unless for purposes of removal by the purchaser will not be subject to sales tax, because the sale will be a sale of real property. AB 1086 provides, however, that the change is prospective only, and the law as it existed prior to September 17 shall continue in full force and effect as respects the application of tax to sales under a contract entered into before September 17, the effective date of the act.

Very truly yours,

E. H. Stetson
Tax Counsel

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