



STATE BOARD OF EQUALIZATION

October 10, 1966

This is to inform you of our conclusions with respect to the above named taxpayer's petition for redetermination of sales tax. It is our recommendation that certain delivery charges be deleted from the audit, and with this adjustment the tax be redetermined.

At issue in this case are the taxpayer's separately invoiced charges for sorting and delivering lumber after it arrives at a compound near the construction site. It is our conclusion that the sorting constitutes site. It is our conclusion that sorting constitutes a service in connection with a sale under § 6012 of the California Sales and Use Tax Law, which provides:

"The total amount of the sale or lease or rental price includes all of the following:

"(a) any services that are a part of the sale."

It also comes within the definition of sale provided by §6006, which provides:

" 'Sale' means and includes:

"The... processing... of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the ... processing..."

Delivery charges by a retailer's facilities are includible in the measure of tax under § 6012 (g), unless title passes to the purchaser prior to the transportation. We are asking the auditors to delete delivery charges in contracts, other than contracts with --- and ---, unless they have specific evidence that title did not pass until the goods arrived at the jobsite. This is because we believe you have established the dual nature of the contracts and the compound according to the taxpayer's oral understanding.

We recognize the taxpayer relied upon an earlier and contrary opinion by a member of our legal staff. However, this does not from a legal basis for excusing the tax. California courts have held that the doctrine of estoppel does not apply to sales tax matters (Market Street Railway Co. v. State Board of Equalization, 137. Cal App. 2d 87).

You are entitled to an oral hearing before the board. If you disagree with our conclusions and desire such a hearing, we will schedule it upon request. The auditor will provide you with schedules of the reaudit adjustments. We would appreciate it if you would advise us concerning the board hearings within 30 days of receiving these schedules.

Very truly yours,

John H. Knowles
Associate Tax Counsel

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