



STATE BOARD OF EQUALIZATION

Sacramento, California
July 26, 1950

--- discussed with me on Friday, July 21, 1950, the Determination made on December 21, 1949 against the above-named Company.

I explained that, due to the position of this office and the Attorney General's office as to the taxability of sales of ships to foreign purchasers, and the anticipated litigation thereon, we were not in a position to alter our view that the tax is applicable to the sale of radios, etc. to foreign purchasers of aircraft, which radios were installed on the aircraft in this State, which aircraft were flown from the State by the purchasers.

--- then indicated that his client would probably pay the tax, file a claim for refund, and await the outcome of the ship litigation.

He thought, however, that the limitation period, as extended by a waiver given by --- precluded inclusion of the period prior to April 1, 1946 since the Corporation, ---, did in fact file returns, and held a permit --- for the place of business--- from which the sales in question were made. Accordingly, I recommend that the quarters ending 12-31-45 and 3-31-46 be deleted.

The same reasoning will also eliminate the penalty imposed under Section 6511. Although the audit report erroneously states that a 10% penalty for negligence was added for failure to report taxable sales, it appears that the taxpayer was not negligent since the only sales not reported were the sales which it is contended were exempt as export sales. This is a bona fide difference of opinion as to the application of the tax to transactions the status of which has not been determined, and upon which litigation is about to be instituted and certainly does not warrant a penalty for negligence.

After making the adjustments herein recommended, kindly advise --- of the amount remaining due. He is desirous of having his client pay this and file a refund claim, which should be held without action thereon pending the outcome of the litigation in the ship sale cases.

EHS:AMD