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**STATE BOARD OF EQUALIZATION**

October 2, 1968

Gentlemen:

This is with reference to the petition for redetermination filed on behalf of "E" and the hearing held on the matter last September 16 in San Diego.

We have reviewed the facts which appear to be undisputed and see the question as one involving the interpretation of Ruling 43.

Here the question relates to the construction and sale of one sarcophagus and whether it is a monument or memorial within the meaning of the term as used in Ruling 43, and is the type of monument contemplated under the ruling, or whether it is, as you have contended a structure designed for use as a private mausoleum and, as such, an improvement to realty.

We understand the sarcophagus was not the work of a memorial dealer, but rather the work of a construction contractor who reported and paid tax on the cost of the materials consumed in the construction.

It is our opinion that Ruling 43 was adopted to tax the sales of tombstones and similar types of markers or memorials which serve only as a marker or memorial marking a grave. The ruling contains language which indicates that the type of memorial to be considered as tangible personal property is that which could be fabricated or manufactured elsewhere and transported to the cemetery and placed on some specific spot, one which is more or less readily removable and one which is not functional as a structure, but rather functional only to commemorate a person or group of persons, and which may or may not identify a grave site.

While we do not have the problem in California, we think it highly improbable that Ruling 43 would dictate taxing, as tangible personal property, a memorial such as the complex marker housing the eternal flame over the late President Kennedy's grave.

Summarily, it is our conclusion that the sarcophagus in your case is not the type of memorial considered to be tangible personal property under Ruling 43. We are recommending, therefore, that the matter be redetermined and that item A be deleted from the measure of tax liability. This will also require eliminating item B from the determination, since it represents a credit for the tax on the materials paid by the contractor who constructed the sarcophagus.

Very truly yours,

Robert H. Anderson  
Tax Counsel

RHA/vs [ lb ]