



STATE BOARD OF EQUALIZATION

December 4, 1950

Re: ----

Gentlemen:

This is in answer to your letter of October 15 in which you explain the manner in which you complete your sales and use tax returns.

We note that you take a deduction under the heading, "Flower and garden seeds". As indicated by Sales and Use Tax Ruling 48, copy enclosed, the tax applies to the sale of seeds at retail unless the products thereof constitute food for human consumption. Accordingly, no deduction should be taken for your retail sales of flower seeds.

The application of the State sales tax to the amount of federal excise tax is governed by Ruling 57, copy enclosed. As therein indicated, a federal tax imposed upon or with respect to retail sales is deductible from your gross receipts. As indicated by the second paragraph of said ruling, however, your gross receipts subject to sales tax include the amount of any manufacturer's tax. In view of the foregoing, it is obviously necessary for you to determine the nature of a particular federal tax in order to determine whether or not it is deductible from your gross receipts subject to the sales tax. As indicated by the first paragraph of said Ruling 57, the federal excise tax imposed with respect to jewelry, furs, toilet preparations, and luggage, are imposed upon or with respect to the retail sale of such merchandise. On the other hand, the federal excise tax imposed with respect to photographic equipment and supplies, sporting goods, and many other items of merchandise is a manufacturer's tax for which no deduction may be taken.

As indicated by Ruling 71, copy enclosed, you are correct in your understanding that you may take a deduction in the amount of the cost price of tangible personal property purchased on a tax-paid basis, which is resold in the regular course of your business before any use is made thereof. The sales price of merchandise purchased on a tax-paid basis should be included in your total sales at Line 1 of your return. A deduction of the cost price of such merchandise may then be taken at Line 11, under the heading, "Tax-Paid Purchases Resold".

As indicated by Ruling 50, copy enclosed, the tax does not apply with respect to sales of newspapers or periodicals published at average intervals not exceeding 3 months. As "pocketbooks" are not newspapers or periodicals, this exemption does not apply, and the sale of such "pocketbooks" at retail is subject to the tax.

We do not feel that adding sales or use tax to purchases reported at Line 2 would clarify your return. As that line is designated to include only the purchase price of property purchased without sales or use tax, it is our suggestion that you report thereon only such items without including the amount of the sales or use tax required to be paid in connection therewith.

R. G. Hamlin