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**STATE BOARD OF EQUALIZATION**

January 22, 1965

Gentlemen:

We have reviewed your petition for redetermination of sales and use tax in light of information obtained at the preliminary hearing and the written agreements subsequently provided. The purpose of this letter is to advise you of our conclusions and directions for further action on each of the protested items.

- (1) Receipts from operation of the  
woodmixer equipment not reported: \$7,005

We have concluded that the entire protested amount in this classification should be deleted from the measure of tax. This is based upon acceptance of your representation that the exclusive right to control the details of the work and the right to manage and control the equipment operator was vested in the various leases.

Notwithstanding the above, we shall continue to regard as taxable processing any work performed by this type of machine on a subcontract or other basis where your firm retains an element of control over the details of the work performed or the right to manage and control the equipment operator.

- (2) Sale of used sand washer  
machine not reported: \$3,500

We have concluded that the activities of the purchaser, "X", were transitory in nature and insufficient to warrant a finding that it was engaged in business in this state for purposes of the sales tax. Under the provisions of Section 6007 of the Revenue and Taxation Code, a retail sale includes:

"The delivery in this state of tangible personal property by an owner or former owner thereof ... if the delivery is to a consumer ... pursuant to a retail sale made by a retailer not engaged in business in this state ...."

Since your firm admittedly delivered possession of the property to the consumer in this state, it is our opinion that it was properly regarded as having made a sale at retail.

- (3) Delivery charges in connection  
with the sale of asphalt road  
materials not reported: \$10,620

Considering all of the attendant facts and circumstances, we have concluded that the proper construction of your asphalt mix sales agreement called for title to pass to the purchaser prior to delivery. Accordingly, we have directed that the delivery charges be excluded from the measure of tax.

A representative of the field staff will contact you in the near future regarding the reaudit adjustments indicated above. In the interim period, if you have any questions regarding this matter, please feel free to correspond directly with this office.

Very truly yours,

W. E. Burkett  
Associate Tax Counsel

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