



STATE BOARD OF EQUALIZATION

December 4, 1953

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Re: Begin deleted text REDACTED TEXT End deleted text

Gentlemen:

We have examined your argument that Section 6019 "limits and further defines" Section 6015 which defines "retailer". We think that the two sections actually set up separate definitions. You will note that Section 6015(a) defines "retailer" as including every seller who makes any retail sale or sales of tangible personal property. "Seller" is defined in Section 6014 as including every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax. Thus, a retailer is one who is engaged in the business of selling certain tangible personal property and makes any retail sale or sales.

On the other hand, Section 6019 defines retailer as including every person who makes more than two retail sales of tangible personal property in any twelve-month period. Here, the necessary element of engaging in business, present in Sections 6015 and 6014, is absent. This section, therefore, is another definition of retailer and not a limitation on Section 6015.

If we assume that the sales by Begin deleted text REDACTED TEXT End deleted text were not sufficient to bring it within the definition of "retailer" in Section 6019, we still have the problem of determining whether that company was a retailer under Section 6015. We think that Begin deleted text REDACTED TEXT End deleted text Company was engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax. Hence, Begin deleted text REDACTED TEXT End deleted text was a seller and any retail sale (unless otherwise exempt) is subject to tax.

Begin deleted text REDACTED TEXT End deleted text business was selling animal yeast and containers for that yeast. Its sales were exempt from tax because either made for resale or for animal feed exempt under Section 6368(b) (except for one sale made to an out-of-state chinchilla ranch). The exemption from tax was due to the use to which the product was put, not to the kind of product sold. Begin deleted text REDACTED TEXT End deleted text therefore, was engaged in the business of selling tangible

personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and any retail sale of tangible personal property would make Begin deleted text REDACTED TEXT End deleted text a "retailer" under Section 6015.

Since Begin deleted text REDACTED TEXT End deleted text Company was a seller, it was required to hold a seller's permit and the sale of the property used in the activity requiring the seller's permit would not qualify as an occasional sale under Section 6006.5.

We regret our failure to reply to your letter more promptly. If you desire to present any further arguments on this matter, we will be happy to consider them. If you do not wish to present any further arguments, will you please advise us if your client still desires a Board hearing.

Very truly yours,

John H. Murray
Associate Tax Counsel

JHM:tj

cc: San Diego - Auditing