



490.0180

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

5-17-57

REDACTED TEXT

It is our understanding that on 4-1-56, you sold Caterpillar tractor serial # REDACTED TEXT to the REDACTED TEXT Company (California) for \$20,000, and reported and paid the sales tax thereon. Subsequently on 9-1-56, due to unforeseeable circumstance, the operating plans of the purchasing company were changed and the tractor was returned to you. Shortly thereafter, it was agreed between the two companies that the sale of the equipment would be rescinded and that a rental would be substituted as a charge for its use.

In your letter, you stated that "Assuming then that the transaction was some sort of sale within the purview of the Act, it must have been, under § 6006, a type of 'rental' which was 'in lieu of a transfer of title' and the 'Sales Price' must accordingly be the 'total amount' of rental paid." We believe, however, that the transaction must be regarded as a sale rather than as a rental.

It is our opinion that a completed sale took place followed by a rescission of the contract of sale. At the time of the sale, you (as the seller) became liable for the sales tax measured by the entire gross receipts from the sale. When the contract was subsequently rescinded, you could have taken a deduction if the entire sales price, including any amount collected as sales tax reimbursement, had been refunded to the purchaser, as required by § 6012 of the Sales and Use Tax Law. To allow a charge for usage or "rent" to be made and still allow a deduction of the selling price would seem quite inconsistent with § 6012, and would afford a means of circumventing its specific requirement of a return of the full sales price, thus rendering the requirement of the section practically meaningless.

Sales Tax Bulletin 52-8, copy enclosed, Indicates the extent to which the retailer may make a charge for costs of restocking, etc., and still be regarded as having refunded the full sales price. You will observe that this does not include a rent or usage charge. Ruling 64, mentioned in the bulletin, is also enclosed.

It will be our recommendation to the board that your petition be denied. You shall receive notice of the board's official action in due course.

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