STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

November 30, 1964

REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is to inform you of our position with respect to the petition for redetermination of the above named taxpayer. We will recommend to the board that the returned merchandise deductions for carrier deliveries after July 3, 1962, be allowed and the tax be redetermined accordingly.

As you know, the returned merchandise deduction is provided by paragraph (b) of section 6012 which provides that gross receipts do not include:

> "Sale price of property returned by customers when the full sale price is refunded…."

The "full sale price" is explained in Sales Tax General Bulletin 52-8 (copy enclosed) to require inclusion of

> "….any expense prior to the 'sale' (i.e. transfer of title, or possession under a conditional sale contract)…"

We believe whether transportation charges should be considered part of the full sale price depends on section 6012 which defines "gross receipts" and section 6011 which defines "sales price." These sections define what charges comprise the measure of tax. We think it would be inconsistent to require transportation charges to be returned as part of the full sale price for purposes of the returned merchandise deduction where they are not required to be included in the measure of sales tax. Since carrier shipments are not taxable irrespective of where title passes as long as they are separately stated, we believe the returned merchandise deduction in those instances is proper and should be allowed in the audit. Where shipment is by your own vehicles and title does not pass until after the transportation is completed, the transportation charges are includible in the measure of tax. Similarly, they are includible in the full sales price for purposes of returned merchandise deduction.

We cannot agree with your contention at the hearing that transportation charges should be considered as pertaining to the lumber used by your customers and not the lumber returned. The amount of the transportation charges depends upon the quantity hauled as well as the length of the haul. Accordingly, when a portion is returned, some

allocation must be made of the cost of transporting it to the job site in order to obtain a returned merchandise deduction on hauls by your own vehicles.

At the end of the hearing, you suggested that you could issue a billing crediting your customers for tax reimbursement on separately stated, carrier delivered transportation charges which are not subject to tax after July 3, 1962, and thus obtain a refund from the state under the provisions of section 6054.5 of the California Sales and Use Tax Law. At the same time you could charge the tax which you previously refunded on returned merchandise. We see no impediment in any provision of the sales tax law to this plan. We assume that you would do this only with respect to items which are still disallowed by the foregoing interpretation of the returned merchandise deduction.

We are referring this matter back to the district office so that they may make the appropriate changes in the audit. They will contact you shortly.

Very truly yours,

John H. Knowles
Associate Tax Counsel

JHK:md

Enclosure

cc: Inglewood – Subdistrict Administrator
Attached are two copies of hearing officer's report dated 10-28-64, which has been approved. This hearing was held in West Los Angeles on 8-26-64.