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**STATE BOARD OF EQUALIZATION**

March 17, 1970

Dear Mr. ---:

This is with reference to your letter of March 3 regarding the petitions of the above referenced accounts.

We agree that the entries transferring equipment from one legally recognized entity to another were probably done by mistake. However, that mistake was continued and carried on to where it had some federal and state income tax ramifications, too.

Unless the reversal is complete, and that includes amending the federal and state corporate income tax returns, we cannot recognize the reversal as having any effect on the results of the original transfer as far as sales tax liability is concerned. Actually, the reversal is nothing more than another transfer without consideration and for that reason will not be deemed to be a second taxable transaction.

A transfer resulting in a sale of tangible personal property made by mistake is, in and of itself, no basis for an exemption, and as in the case of rescinded transactions, returned merchandise, etc., the liability can only be abated if everything is restored to where it would have been had the transfer never taken place.

Actually, if it were not for our recognizing the contention that the transfer was a mistake, we would not be in any legal position to recognize the reversal of the transfer at all because, in the interim, between the time the taxable transfer was made and the mistake discovered, a taxable use was made of the property including taking depreciation, etc., on the transferee's income tax returns. This is exercising rights and powers over tangible personal property incident to the ownership of that property. Thus, the federal and state returns must be amended before we will recommend that the transfer was a nullity and should not be included in any measure of tax liability on the business reorganizations that took place.

Very truly yours,

Robert H. Anderson  
Tax Counsel

RHA/vs [1b]