



STATE BOARD OF EQUALIZATION

April 30, 1954

A--- M--- & F--- Company
XXXX --- Avenue
--- XX, --- ---

Account: XXXXXX
Now: SZ --- XX-XXXXXX

Gentlemen:

This concerns your claim for refund of \$679.80 tax on two wrapping machines sold to L--- U--- B---, Inc.

California has bot a sales tax and a use tax. The sales tax applies to retail sales of tangible personal property in this State. A sale is defined as a transfer of title and, therefore, if goods are shipped to a California purchaser from an out-of-state destination with title passing at the point of shipment, the sale is not made in California and the sales tax does not apply. As indicated in paragraph A-2-(b) of Ruling 55 (copy enclosed), if the sale is made in California, the fact that the purchaser intends to transport the property outside this State prior to use and does so will not exempt the transaction from the sales tax.

The use tax applies to the use in this State of tangible personal property which has been purchased for use in this state. The use tax does not apply to any transaction which is subject to the sales tax and therefore finds its principle application to purchases from out-of-state sources which are beyond the scope of the sales tax. Since the machines in question were only stored in California and were shipped to Seattle by the purchaser for use there, the use tax does not apply by reason of the second paragraph of Section D of Ruling 55. Accordingly, the problem is to determine whether title to the machine shipped from Buffalo to San Jose passed to the purchaser at Buffalo or in San Jose.

We have a report from our San Francisco office showing the information contained in L---'s records. On November 17, 1950, L--- issued Purchase Order No. 32929 for one machine to be shipped to San Francisco f.o.b. Buffalo. On June 9, 1951, L--- issued Purchase Order No. 37466 for two machines to be shipped to San Jose f.o.b. Buffalo. In July 1951 L--- issued Purchase Order No. 37677 for one machine to be shipped to Seattle. Subsequently, L--- cancelled Purchase Order No. 37466 for two machines to be shipped to San Jose.

However, in spite of the cancellation, two machines were shipped to San Jose. In addition, one machine was shipped to Seattle. The machine shipped to Seattle was returned to you by L---. L--- accepted the two machines shipped to San Jose in satisfaction of Purchase Orders No. 32929 and 37677. Thereafter, L--- shipped the two machines in San Jose to Seattle without making any use of the machines in California.

It is our opinion that title to the two machines shipped to San Jose did not pass to L--- when they were put on board a carrier in Buffalo because the machines were not shipped pursuant to a contract. There had been a purchase order to cover the two machines shipped to San Jose but the purchase order had been cancelled. Thus, title did not pass until L--- agreed to accept the two machines in satisfaction of their Purchase Orders No. 32929 and 37677. At the time this occurred the machines were in California.

Since it appears that title to the machines passed after they arrived in California, the sales tax is applicable and the subsequent disposition of the machines by the purchaser does not render the sale exempt. We shall therefore recommend the denial of your claim for refund. We shall defer final action for 30 days to allow you to submit any additional facts or authorities.

We enclose an extra copy of this letter for your convenience in corresponding with Langendorf.

Yours very truly,

Bill Holden
Assistant Counsel

BH:ja

cc: New York
San Francisco – Auditing (BHA)