

STATE BOARD OF EQUALIZATION

OFFICE CORRESPONDENCE

495.0780

Place: Sacramento, California
Date: July 21, 1953

To: Mr. E. H. Stetson

From: John H. Murray

Re: S---, Inc., F--- J. E--- Co., Inc.,
And The D--- H--- Co.
dba S---, E---, H--- (Joint Venture)
XXXX --- --- Street
---, California

Account No. C-XXXXXX

Taxpayer is a joint venture operating as a general contractor for the installation of approximately five miles of the south interceptor sewer for the --- --- --- Sewage Disposal District.

We are advised that the work was completed in July or August, 1951. During the last nine months of the year 1951, the members of the joint venture withdrew capital equipment, merchandise, and other items which had been used in performing the venture's work. These were set up upon audit as taxable sales.

The agreement under which the venture is operated stated in part:

"...all net profits represented by cash, equipment, receivables or claims of any kind or character, or other property derived from the performance of the work to be done under said contract, and any and all losses which may result from the performance of said work shall be participated in and shared by the parties hereto proportionately in accordance with their respective interests as set forth in Paragraph One (1) hereof,

Stolte	45%
Early	30%
Harrelson	25%"

We are advised that all cash advanced by the adventurers to the joint venture was credited to their respective advance accounts. Cash withdrawals or payments to the adventurers and all billings for equipment, merchandise, or other items withdrawn by the members from the joint venture were debited to their respective advance accounts. As of April 17, 1953, these accounts had not been closed and each had a credit balance.

At no time did the amounts charged to any of these accounts exceed either the adventurer's share of the capital or surplus. The amounts charged to the advance account for such items were quite negligible in comparison to the total advances made by each of the adventurers.

The Joint venture's books were posted to show charges made to the member's account when supplies, equipment, or other items were withdrawn. In addition, a second journal entry was made to clear the depreciation reserve account and in some instances to adjust an account called "Gain from Sales of Assets" for the difference between the transfer price and the book value. Upon reaudit it was determined that the books show capital gains upon certain of the items withdrawn (marked in red 1, 2 and 3 of schedule 1B, page 1 of the original audit working papers), and taxpayer agrees that these items are properly treated as taxable sales in our audit report.

At the hearing taxpayer's attorney contended that Attorney General's Opinion number 45/225 dated October 3, 1945, was not applicable here because no cash was paid and no invoices issued. He also cited a number of cases on partnerships, none of which is in point with respect to our problem here. Taxpayer's attorney also contended that the venturers and not the venture owned the personal property used by the venture. This is contrary to the statements made by the Attorney General in his opinion number 42/225. The Attorney General's Opinion correctly states the law that a joint venture is similar to a partnership that each partner's interest in the partnership is his share in the profits and surplus; that each partner is a co-owner of the specific partnership property as a tenant in partnership. It would seem, therefore, that the withdrawals of property by the joint venturers and the debiting of the respective advance accounts are transfers of title of tangible personal property for a consideration and, therefore, sales of the property transferred. This is consistent with the California Supreme Court's opinion in Northwestern Pacific Railroad Co. v. State Board of Equalization, 21 Cal. 2d 524.

Taxpayer's protest is a late protest and the determination has become final. Taxpayer has paid the entire amount of tax, interest, and penalty under the determination.

After the preliminary hearing, and on February 9, 1953, taxpayer filed a claim for refund for the amount of taxes paid. Upon reaudit it was determined that certain adjustments should be made reducing the measure of tax by approximately \$3,000.00.

It is recommended that the tax be redetermined in accordance with the amount found due upon reaudit and refund be made of the partial overpayment.

JHM:tj