STATE BOARD OF EQUALIZATION

As requested by you, I have examined the audit report and correspondence accompanying Mr. _____'s memo to you dated December 2, 1955, and headquarters' file of this permittee.

It appears that the partnership is engaged in preparing blueprints, drawings and maps, from engineering and other data furnished by customers who are licensed engineers. The partners do not obtain this data through the use of engineering or other technical skills, but from data furnished to them they use their drafting skill in preparing the maps, blueprints and drawings which their contract requires them to produce and deliver to their customers. These are the end products desired, and which are used by the customers in their business.

The receipts of the partnership appear clearly to be "gross receipts" as defined in Section 6012 of the Sales and Use Tax Law. The definition specifically allows no deduction on account of "labor or service cost" and expressly includes "any services that are a part of the sale". This has been a part of the law since its first enactment in 1933.

As early as 1940, the California Supreme Court in Bigsby v. Johnson, 99 Pacific 2d 268, considered the question of the taxability of charges where a high percentage of the cost was the labor or skill of the seller. My letter of March 4, 1949, to Mr. _____, Attorney, copy attached to the audit report, explains that this and other court decisions have held the entire receipts to be taxable.

Since that time, the California Third District Court of Appeal has held in Banken v. State Board of Equalization, 79 Cal. App. 2d 572, that charges for the dying of cloth were taxable, even though the value of the dye applied to the cloth was negligible compared to the total charge and even though the cloth was furnished by the customers. The court cited the Bigsby case with approval.

The report indicates that the partnership claims its charges are for "engineering services", but as already pointed out, services necessary to the production of the tangible personal property contracted for are a part of the sale and not deductible from gross receipts. The partners also claim that what they do is comparable to the preparation of a brief by an attorney, a financial statement by an accountant or a report by a licensed engineer. It is true that we have never regarded such reports prepared by professional people as tangible personal property sold by them, but we believe there is a valid difference in that the client of an attorney or an accountant pays for information or advice, and not for a specific article of tangible personal property, as for example, a map or chart. The work of the attorney or accountant is the formulation of ideas or conclusions whereas the work of the present parties is the preparation of maps or charts, even though a high degree of skill may be required in their preparation.

A precedent which seems somewhat parallel is that of a person who specialized in making photographs or drawings of the scene of traffic accidents for use in Court. He prepared maps, etc., showing locations of posts, curbs, and other physical data. He was regarded as

selling tangible personal property.

These views are not the result of any new law, ruling, or change of thinking. They are based on provisions of the law that have existed since the inception of the tax.

From the facts set forth in the report regarding the claim of a partnership with "A", a surveyer, I do not believe that a partnership is shown to exist. But even if it did exist, the contention of the partners that a "large portion of the receipts were received as their portion of payments to them as members of a partnership" would merely indicate that a partnership consisting of "B" and "A" would be liable for the tax, and as partners "B" would be liable for the full amount of tax due.

We, of course, have only the facts set forth in the audit report. There is always the possibility that something has been overlooked or omitted. I would suggest that the determination be levied as recommended by the audit report and if the permittee disagrees therewith, that a Petition for Redetermination be filed, and a hearing requested. Myself or some other member of our legal staff could then hold a hearing in the Santa Ana, San Bernardino, or Los Angeles office in order to ascertain any additional facts, discuss the matter with petitioner and make a recommendation to the Board. The audit report and correspondence which you forwarded to me is returned herewith, in accordance with our discussion last Wednesday.

E.H. Stetson
Tax Counsel