



STATE BOARD OF EQUALIZATION

June 27, 1956

[N]
Southeast Corner, XXth & ---
--- --- X, California

Attention: Mr. [P]

Gentlemen:

In your letter of June 13 you state "our contention is that the new increased sales tax rate is not applicable, because the increase in rate went into effect after the contract was agreed upon". We, of course, have no quarrel with the quotation in your letter from an author on the law of contracts.

The California Supreme Court has, however, passed squarely on the question of the validity of the imposition of a sale tax with respect to sales made after the tax goes into effect but pursuant to a contract entered into prior to the effective date of the tax. In *National Ice Company v. Pacific Fruit Exp. Co.* (11 C. 2d 283) the court made the following statement:

"Regarding the point that as to sales of ice made by the appellant 'under a contract made prior to the effective date of this act', the imposition of a tax on the retailer will have the effect of lessening the sale price of such ice, and consequently will impair the obligation of such contract, it need only be said that the principle of law is well established that the existence of an executory contract between or among two or more individuals presents no obstacle to the right or power of the state to levy or to impose a tax which may adversely affect the financial interests of either or any of the parties which may have been acquired under or by reason of the mutual covenants of such parties to the contract. An excerpt from one eminent authority will suffice to illustrate the rule. In the dissenting opinion in the case of *Coolidge v. Long*, 282, U.S. 582, at page 638 (51 Sup. Ct. 306, 75 L. Ed. 562), the following pertinent language occurs: 'In short, it is evident from the authorities cited, and many more which might be quoted, that the power to tax property, or a right, or a status, or a privilege, acquired or enjoyed by virtue of a contract, is in nowise hindered or impeded by the fact of the existence of the contract whether it antedates or follows the effective date of the taxing act. No exercise of a governmental power, whether it be that of taxation, police, or eminent domain, though it makes less valuable the fruits of a private contract, can be said to impair the obligation thereof.'"

This was a case in which it was contended that the State sales tax was not validly applied to the receipts from a sale made after the effective date of the State sales tax when the price was fixed by a contract entered into prior to the effective date of the tax. The court held the tax applied, and we believe, accordingly, that the local tax is not prevented from applying legally even though the contract under which the sale is made was entered into prior to the effective date of the local tax.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:tl

cc: Los Angeles - Auditing