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**STATE BOARD OF EQUALIZATION**

May 25, 1965

Gentlemen:

This is to advise you of our recommendation to the Board with respect to your claims for refund. We will recommend the allowance of a claim for the fuel oil aboard the "X" shipped out of state under a bill of lading issued by the "Y" corporation. We will also recommend an allowance of an additional claim for the local use tax on purchases of insignia. We agree, however, with the auditor in offsetting the fuel oil aboard the "Z" and the purchases of cargo containers.

"Y" supplied us with the bill of lading on the "X" fuel oil. We have not been supplied with a similar document with regard to the "Z" and therefore find no basis for allowing a refund on that shipment. The insignia item was not included in the original claim for refund because it was not made known to our auditor. He had no objection to it and we are recommending that it be allowed.

The cargo containers were purchased from "A" through "B", a corporate subsidiary of "C". The lease from "B" to you was previously considered a lease in lieu of a sale and taxable as a sale for purposes of the Sales and Use Tax Law. We believe this interpretation is correct and that use tax is due upon your use of these items in California. The installation of these goods into commercial service is the first consumptive use made of them because they were brought empty into this state from New Jersey. The first consumptive use in California constitutes a taxable event. (H. J. Heinz Co. v. State Board of Equalization, 209 Cal. App. 2d 1 [25 Cal. Rptr. 685]; American Airlines v. State Board of Equalization, 216 A.C.A. 215 [30 Cal. Rptr. 590].) Moreover, the installation of these goods into commerce is itself an intrastate use not entitled to constitutional protection under the interstate commerce clause. (Southern Pacific Co. v. Gallagher, 306 U.S. 167.) We do not believe the fact that the goods were made the subject of a lease constitutes a prior use; at least it is not a consumptive use under the Heinz and American Airlines decisions. It was, at most, a means of financing the property.

You have requested a Board hearing on your claim for refund. If you disagree with our conclusions and still desire such a hearing, it will be given on request. Please let us know within the next 30 days so that we may make the necessary arrangements. If a Board hearing is no longer desired, please sign and return two of the enclosed waiver of Board hearing forms. The third copy is for you files.

Very truly yours,

John H. Knowles  
Associate Tax Counsel

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