

STATE BOARD OF EQUALIZATION

OFFICE CORRESPONDENCE

295.0660

Place: Sacramento
Date: May 21, 1951

To: Mr. William R. Thomson

From: E. H. Stetson

Re: The --- Company
XXX --- --- Street
--- --- XX

Now: SZ --- XX-XXXXXX
Account No. X-XXXX

With reference to your memo of April 27, we did give consideration in formulating our memo of April 9 to the fact that national manufacturers frequently purchase advertising material and sell it to their dealers at less than cost.

You state that inasmuch as a national advertiser and manufacturer receives some benefit from the advertising itself, it would seem that the combined incidence of the tax should amount to the cost of the advertising materials. While there may be justification for such an application of the tax from an economic or policy standpoint, we do not think that the present language in the Sales and Use Tax Law authorizes such an application of the tax.

If the manufacturer gives away the advertising material then, provided the gift takes place in the State, he is liable for use tax upon the purchase price to him of that material. If he makes but a nominal charge to his dealers for it, we would still feel able to state that he was the consumer of it rather than the reseller thereof. We do not, however, believe that where there is in fact a substantial sales price we are warranted in disregarding the fact, which we believe must be conceded, that there was a resale of the material. If there was such a resale, then under the definitions in the statute the property was purchased for resale and the tax applies only to the retail price.

As we pointed out, if a fictitious retail price were charged solely to avoid tax, we could ignore that price as a sham. If, on the other hand, the transaction is bona fide, we do not believe that under the statute we can find any "incidence" of the tax other than that contemplated by law, i.e., the gross receipts from the retail sale of the tangible personal property.

EHS:ph