



STATE BOARD OF EQUALIZATION

March 13, 1968

Dear Mr. ---:

Kindly refer to our letter of February 6, 1968 in which we acknowledge receipt of your client's second claim for refund as being one which the Board has jurisdiction to act upon.

When I wrote that letter, I recognized the fact that there was a question of whether or not the Board has jurisdiction to act upon the second claim for refund. This question arose from the fact that the Board had previously denied you client's first claim for refund although it was based on different grounds than the present claim.

In reviewing our files, I was unable to find any letter ruling passing upon the exact question. Believing this was a matter of first impression, I resolved it in your client's favor. It has now, however, been brought to my attention that in June of 1955 this exact question was presented to the Attorney General who issued an informal opinion on the subject.

The substance of this opinion follows:

Once the Board has denied a claim for refund and 90 days has elapsed from the mailing of the notice of denial without the filing of a court action to recover the tax, the Board is without jurisdiction to entertain a second claim for the same tax upon a separate ground even though the three-year limitation period for filing claims has not yet run. The reasons given for this conclusion are that the action of the Board is res judicata as to the claimant and the second paragraph of Section 6933 of the Sales and Use Tax Law in itself precludes consideration of the second claim.

It appears, accordingly, that the Board is without authority to give consideration to the claim in question. After the elapse of six months from the date of filing the second claim, you client could bring an action in the superior court upon that claim which would be referred to the Attorney General for defense. Presumably, he would raise, by demurrer, the question of the Board jurisdiction to act upon the claim which would then be ruled on by the court.

Very truly yours,

Glenn L. Rigby
Tax Counsel

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