STATE BOARD OF EQUALIZATION

November 7, 1951

Mr. W. S--- H---
XXX --- Building
XXX South --- Street
--- ---, California

Account No. - - XXX
E--- - C---, Inc.

Dear Mr. H---:

Following our telephone discussion on Monday, November 5, of the item of returned merchandise involved in the petition of your client named above for Redetermination of our sales and use tax determination, I reviewed the entire file and discussed the matter with Mr. H. G. Wright, Supervising Auditor, with whom you conferred prior to our conversation.

The situation appears to be that when merchandise is returned a credit memorandum is issued for the full amount of the sales price including sales tax reimbursement followed, however, by a billing designated as a delivery charge, a usage charge, or a rental. We understand that on the original sale there was no separate charge for delivery, and the total amount charged was definitely subject to the sales tax as part of the gross receipts from the sale.

In order for a retailer to be entitled to a deduction on account of merchandise returned, Section 6012 of the Sales and Use Tax Law requires that the "full sales price" be refunded. Where the credit memorandum indicates a refund or credit of the full sales price followed, however, by a billing for a charge designated as delivery, use, or rental, it would appear that in substance the requirements of the statute have not been complied with, regardless of whether the billing is designated as a delivery charge, usage charge, or rental. The fact is that a charge is made to the customer on account of the transaction resulting in the return of merchandise which in substance and effect is not to refund or credit to the customer the "full sale price" as required by Section 6012. The fact that tax may have been paid measured by the amount of this delivery, usage, or rental charge does not alter the fact that the customer has not received a refund or credit of the full sale price. Whether the customer purchases other merchandise or not would appear immaterial since, as we understand it, he pays the full price of the replacement merchandise plus the charge made on account of having returned the original merchandise. If the customer had originally been charged for the delivery of the merchandise and it title to the merchandise had passed to the customer prior to delivery so that under Section 6012 the delivery charge would not be a part of taxable gross receipts, then failure to refund the delivery charge would not prevent the taking of a deduction for returned merchandise. We understand, however, that no such exempt delivery charge was made.

I have written this letter rather than telephoning you in order to set forth in writing what appears to be factual basis and the legal reason for reaching a conclusion contrary to your position. If you desire to discuss the matter with me further, I shall, of course, be pleased to do so by telephone or in person, should you plan to be in Sacramento in the near future.

Unless we are in error in our understanding of the facts, it appears that this staff will be unable to recommend to the Board a deletion of the item in question. In the event a Board hearing is desired, please let us know.

I have no commented in this letter on the situation when the merchandise is returned after ninety days from the date of the sale since in this situation it appears to be clear that the requirements of the statute have not been complied with.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph

cc: Mr. W--- R. T---