



STATE BOARD OF EQUALIZATION

February 24, 1956

X-----

Dear Mr. X-----:

This is in reply to your letter of January 27 in which you request information concerning your liability for State sales tax upon a sale of 280 tons of steel piling to X-----, Inc. You state that you made delivery of 194 tons of this material to the projects in Arizona, but that the balance of 86 tons could not be delivered immediately due to a backlog in mill rolling schedules. Because your customer needed the material immediately, it "borrowed" the 86 tons from X----- . Your customer requested you to make your final delivery of the 86 tons to X----- at Compton, California.

As we understand it, X----- retained this material in replacement of that which it had "loaned" to X-----, Inc. It appears, therefore, that while you received payment for the 86 tons from X-----, you delivered it to X----- at a point in this State. Thus, your sale of this material is not exempt from sales tax as an interstate sale.

Even if it might be said that your sale to X-----, was a sale for resale to X----- you made delivery in this State to X----- and thus you are required by specific provisions of Section 6007 of the Sales and Use Tax Law to pay the sales tax on the retail selling price, as under that section your sale is deemed a retail sale. Therefore, unless X----- acquired this material solely for the purpose of resale, there appears to be no legal basis to excuse you from payment of the applicable sales tax. The fact that X----- may have paid tax upon its acquisition of that piling which it delivered to X----- provides no legal basis for the exemption from tax of your sale of the material which replaced that delivered to X-----.

We note your statement that our Los Angeles office is of the opinion that the material is not taxable. Unless there are facts not yet called to our attention, we are unable, for the reasons heretofore stated, to advise that the tax does not apply.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ds

cc: Los Angeles – Administrator

Please note that this taxpayer states that your office expressed the opinion that the tax would not apply to the steel piling in question. If you have any information differing from ours which might permit a different conclusion, please let us know.