



557.0640

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

December 2, 1964

Gentlemen:

We have again reviewed the facts relative to the petition for redetermination of additional taxes assessed against REDACTED TEXT in the determination dated January 30, 1964.

It is our opinion that any trucker who is carried on the company's payroll must be considered an employee rather than an independent carrier if he receives employee benefits prescribed by the REDACTED TEXT and is treated as an employee for purposes of payroll deductions and taxes. Accordingly, we believe that the charges for transportation by any such trucker during the audit period must be regarded as transportation by facilities of the retailer.

In summary, then, we conclude as follows:

1. Tax applies to charges for transportation by any truckers in the company's employ, as described above, during the periods of April 1, 1961 to June 30, 1961 and July 1, 1962 to March 31, 1963.
2. Tax applies to all delivery charges during the period of July 1, 1962 to June 30, 1962, regardless of whether deliveries were made by the company's employees or by independent carriers, since the "Quotation" used by the company during this period did not meet the requirements of ruling 58 or Business Taxes General Bulletin 61-23.
3. Tax does not apply to charges for transportation by independent carriers during the period of April 1, 1960 to June 30, 1961 in those instances where sales were made "f.o.b. plant," since sufficient doubt exists to resolve the question of title passage in favor of the company pursuant to subsection (c) of ruling 58 as amended June 7, 1960.

The district office is being requested to conduct a reaudit in accordance with these views. A revised billing will be issued in due course.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:dse

cc: San Jose – District Administrator

Please make arrangements for the necessary reaudit of this taxpayer.