State of California **Board of Equalization**

560.0200

Memorandum

To: District Tax Administrator Date: January 11, 1956

From: Headquarters – Sales Tax Counsel (WWM)

Subject: Tax on use of buildings purchased from United States for removal.

After reviewing certain claims for refund and petitions, it appears to the staff that the use of buildings purchased from the United States for removal is often not an exempt use under Section 6402.

To illustrate, we have outlined the facts and reasoning in connection with five claims and petitions where the staff will recommend to the Board that the use tax properly applied.

First, is the refund claim of REDACTED TEXT. Mr. P, by way of competitive bid, purchased 6 duplexes at a unit purchase price of $1,760, or a total purchase price of $10,560. The sale was made by the Bureau of Reclamation as part of a sale of its city of REDACTED TEXT number one housing camp. At the time of purchase, the buildings were on land owned by the city of REDACTED TEXT. Mr. P, pursuant to his contract with the Department of Interior, removed the 6 units and placed them on his own property.

Prior to the sale to Mr. P, the Department of Interior, as the owning and holding federal agency, declared on a General Service Administrator Form, to the General Services Administration or the General Services Administrator, certain parts of the REDACTED TEXT housing property, including the duplexes in question, as excess to the needs of the Department of Interior. A General Services Administration official wrote back to the Interior Department that the property was surplus to the requirements of all the federal government and returned the property to the Department of Interior for disposal.

The legal staff has concluded that the General Services Administration (GSA) succeeded to the functions of the Surplus Property Board. The Surplus Property Act of 1944 defines "property" as any interest owned by the United States or any government agency, in real or personal property of any kind, excluding only the public domain and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines. "Surplus property", is defined therein as any property determined to be surplus to the needs and responsibilities of the owning agency. Under that act, the owning agency has the continuous duty to survey the property in its control, and determine which property is surplus to its needs and responsibilities and promptly report such property to the Board. Under the Federal Property and Administrative Services Act of 1949, the act establishing the General Service Administration, the term "property" is similarly defined. That 1949 Act defines the term "excess property" in a substantially similar manner as the term "surplus property" is defined in the 1944 Act. Under the 1949 Act, also, each owning agency

must continuously survey property under its control to determine which is "excess property" and promptly report such property to the General Service Administrator. (The 1949 Act does use the term "surplus property", but in that act it means "excess property" found not required for the needs of all federal agencies as determined by the administrator.)

Furthermore, under both the 1944 and the 1949 Acts transfers of property surplus to the needs of the owning agency to another federal agency which will be able to use the property are given priority. The Surplus Property Board created in 1944, had a duty, under the 1944 Act, to facilitate such transfers. The General Services Administrator created under the 1949 Act, has a duty to prescribe policies to provide for the transfer of such property among the federal agencies.

In addition, it is to be noted that the purpose of both acts is to provide for the efficient disposition of property found to be surplus to the needs of the entire federal government.

Accordingly, in the staff's opinion, the GSA has succeeded to the functions of the Surplus Property Board and furthermore, property declared as excess to the GSA is surplus property as defined in Section 6402.

Inasmuch as the 6 duplexes were declared "excess property", essentially the same thing as surplus property under the 1944 Act, to the GSA, the successor to the Surplus Property Board, the use tax should apply. The fact that the sale was made by the Bureau of Reclamation, the owning agency, rather than by the GSA is completely immaterial.

Second illustration is the refund claim of REDACTED TEXT to Mr. M for removal. The local office of the Bureau of Reclamation advised our Redding office that under its regulations it was not necessary for the Bureau to obtain the permission of the GSA to make the sale. It was only necessary that the property be classified as available and when no other federal agency signified its need for the property, the Bureau advertised subject property as being for sale to the highest bidder who ultimately was REDACTED TEXT.

It is to be noted that under the 1949 Act, the General Service Administrator may delegate any authority vested in him by the act (except for authority to issue regulations on matters of policy having application to executive agencies, and, except as otherwise provided in the act) to any official in the General Services Administration or to the head of any other federal agency.

Furthermore, he has the express authority to direct any owning or executive agency to perform functions otherwise to be performed by the GSA provided the executive agency or the president gives consent.

It would appear that these 4 duplexes were reported as "excess property" by the Reclamation Bureau to the GSA; or at least the GSA was informed that the property was excess to the needs of the Bureau in order that other federal agencies would have the opportunity to acquire the property if needed; or at the very least the property was classified by the owning agency within the meaning of the 1949 Act. When such "excess property" was later found unwanted and unneeded by any other federal agency, the purpose of the 1949 Act was completely effectuated. Assuming without deciding that this "excess property" was not formally reported to the GSA, the only reason would appear to be that the GSA delegated this function to the owning agency pursuant to the 1949 Act and therefore, for purposes of Section 6402, we should regard the property as having been reported to a successor of the Surplus Property Board. The point is that the property was subject to the general control of GSA policies and was surplus property within the meaning of Section 6402.

There are also the separate petitions of REDACTED TEXT and REDACTED TEXT who purchased houses from the United States government District Corps of Engineers. Facts furnished the legal staff are somewhat meager, but indications are that the items have been listed as "excess property", and furthermore for the reasons states under the refund claim of Mr. P, it would appear that such buildings had to be declared as excess to the needs of the owning agencies before disposition.

We also had the petition of Mr. P, who, under similar circumstances, purchased buildings and other items from the District Corps of Engineers. While we were not certain on this point, the other items were perhaps certain furnishings in the duplex which under the federal regulations were to be disposed of in the same manner as the building. We have regarded the tax as applicable.

We understand that sometime ago many of the district offices of this Board were furnished with a memorandum or memoranda from Sacramento-auditing in which also were enclosed lists of purchasers of buildings from the United States Bureau of Reclamation regional office located in Sacramento. Each district received a list of purchasers from its district. In view of the foregoing discussion, it would appear that to the extent the statute of limitations is not a bar, those purchasers in the various districts should be investigated for possible billing in the event that such has not been done. We further understand that a further review of sales of building by the Bureau of Reclamation is to be made by Sacramento-auditing in the future, with the result that further customer lists for each district may be forthcoming.

Note that the tax should apply even though the land is owned by the federal agency provided the building is sold for removal. In other words, it was not significant in the case of Mr. P that the city owned the land.

We would appreciate your report and comments. In the even there are any purchases from United States agencies about which you may have further questions, please let us know.

W. W. Mangels

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