



STATE BOARD OF EQUALIZATION

October 25, 1960

[X]

Dear [X]:

In your letter of September 28, you state that your client is engaged in the business of selling houses that are relocated from their original sites to other locations. The houses are sold on a delivered basis for a lump sum plus sales tax reimbursement.

Your client will lend money to the purchaser to complete the relocation of the house (plumbing, electrical work, plastering, etc.). The amount loaned plus the sales price of the house, including sales tax reimbursement, are incorporated into a promissory note secured by a deed of trust on the real property where the house is to be located. The note is payable one year from date of sale and the transactions are handled on a no down-payment basis. Sales tax is remitted to the State at the time the sale is made.

In some instances, the purchasers are unable to pay off the notes when due. If your client forecloses on the property under the deed of trust, he acquires the house which he sold plus the land on which it is located. You desire to know whether your client may take a returned merchandise credit as explained by Sales and Use Tax Ruling 64 and Sales Tax General Bulletin 52-8, copies enclosed, or whether a bad-debt credit is allowable under Section (b) of Ruling 61, copy also enclosed.

A returned merchandise credit would not be in order because Section 6012 of the Sales and Use Tax Law provides that the full sale price, including that portion designated as "sales tax" must be refunded either in cash or credit to the customer. It is our opinion that the note constitutes consideration for the sale of the house. When your client has acquired the security for the note under a power of sale provision in the instrument or foreclosure proceedings we do not believe it could be said that the full consideration was refunded or credited to the customer's account.

It appears that a bad-debt credit would be in order provided the conditions set forth in Ruling 61 are complied with. The ruling is quite specific in setting forth the conditions to be met if the and debt deduction is to be allowed. Sales Tax General Bulletin 58-9 and an Explanation of Procedure for Claiming Bad Debt Deductions on Sales and Use Tax Returns, dated December 23, 1958, issued under the signature of Harry L. Say, Sales Tax Administrator were issued to clarify the ruling and are also enclosed.

[X]

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We trust this information is sufficient for your purposes, but if you have further questions feel free to inquire.

Very truly yours,

Jack D. Paulson
Associate Tax Counsel

JDP:rg

Enclosures

cc: Los Angeles – Administrator