



STATE BOARD OF EQUALIZATION

March 15, 1960

Gentlemen:

This is in reply to your letter of February 23 requesting a ruling as to liability for sales or use tax with respect to inventory items contributed by you to "X". You delivered these items in San Francisco for shipment. As these were inventory items, we assume that they were purchased for the purpose of resale under a resale certificate without any reimbursement for sales tax paid to vendors, or were purchased outside this state without payment of use tax.

The making of a gift or donation of property is a use of that property under the law, which defines "use" as the exercise of any right or power over property incident to the ownership thereof. It is also provided in the Sales and Use Tax Law, Section 6094, that any person who purchases property under a resale certificate and makes any use of the property other than retention, demonstration, or display while holding it for resale incurs liability for use tax measured by the cost of the property to him.

It appears from the facts stated in your letter that in view of the foregoing provisions of the statute, you are liable for use tax when you make a gift in this state of merchandise which was purchased by you under a resale certificate, or outside this state. The fact that the purchaser intends to, and does, transport the property to a point outside the state does not alter the fact that prior to such transportation, the donor made a use of the property in this state, and no exception is provided in the law on account of such subsequent shipment of the property outside this state.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:tl [lb]
cc: San Jose – Admin.