



STATE BOARD OF EQUALIZATION

PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001

TELEPHONE (916) 445-2641

July 30, 1976

Mr. G--- F---
Deputy General Counsel
M--- W--- District
P.O. Box XXXXX
--- ---, California XXXXX

Dear Mr. F---:

SS -- XX XXXXXX

This will confirm our advice to you of July 28, 1976. The question has arisen as to whether liquidated damages may be offset against the stated contract price of tangible personal property in determining the measure of California use tax. You have received conflicting advice from this Board.

The California use tax is measured by the "sales price" of tangible personal property. Revenue and Taxation Code Section 6011 defined "sales price" to mean the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of the cost of any expense. The total amount for which property is sold includes any amount for which credit is given to the purchaser by the seller.

It is the position of this Board that the stated contract price of tangible personal property is the "sale price" subject to the use tax without regard to the fact that breach of certain terms of the contract by the seller may occasion operation of a liquidated damages provision.

It is clear that a reduction of the selling price of tangible personal property is not effected by an award of damages resulting from litigation concerning the contract or by a payment by the seller to the purchaser in settlement of claims for damages made by the purchaser. This rule applies even where the parties characterize the settlement payments as "voluntary price adjustments." See *Southern California Edison Co. v. State Board of Equalization*, 7 Cal.3d 652.

It is our view that a liquidated damages provision may not be regarded for sales and use tax purposes as a pricing mechanism.

We apologize for any inconveniences which our prior advice on this subject may have occasioned you.

Very truly yours,

Gary J. Jugum
Tax Counsel

J:alicetilton

cc: Mr. T. P. Putnam
Assistant Chief Counsel
State Board of Equalization

bc: -- -- District Administrator