



STATE BOARD OF EQUALIZATION

November 19, 1970

Dear Mr. ---:

This is to advise you of the position we have taken in regard to your petition for redetermination of tax dated September 1, 1970. It will be our recommendation to the Board that your petition be denied.

The transaction in question involves the purchase by your company, "A", of certain machinery, parts, and accessories for the manufacture of bent laminated glass, especially windshields, and related technical assistance and "know-how", from "K" of Finland.

According to the terms of the agreement between "A", "K", and a certain "F":

- (1) In consideration of the payment of "A" to "K" of the sum of \$60,000, "K" agreed to disclose to "A" certain trade and manufacturing secrets, know-how, and technical information for the manufacture of laminated glass, whether patented or not.
- (2) "K" granted to "A" the sole license in a certain defined territory to manufacture and sell laminated bent glass according to the secret process.
- (3) "K" and "F" covenanted not to disclose the process to any persons not in the territory of "A".
- (4) "A" covenanted not to disclose the process to any other person.
- (5) "K" agreed to allow "A" to inspect its facilities.
- (6) "K" agreed to manufacture and supply certain enumerated items of equipment F.O.B. Helsinki for the price of \$35,000.

Our audit staff has taken the position that the use tax obligation is properly measured by the full contract price of \$95,000.

You have taken the position that you "are being taxed on 'know-how' in addition to the equipment purchased. 'Know-how' is not taxable and was purchased separately from the machinery."

Section 6201 of the California Revenue and Taxation Code provides that a use tax is imposed on the use in this state of tangible personal property purchased from a retailer for use in this state. Basically, then, the use by you of the machinery in question in this state will give rise to use tax

liability. This is so even though you may pay U.S. customs fees upon the importation of the machinery into this country.

Section 6011 of the code provides that the measure of the tax, the "sales price" of the machinery, "means the total amount for which tangible personal property is sold [including] any services that are a part of the sale." Where, as here, there is a single integrated agreement for the purchase of machinery and "know-how", it is our opinion and has been our opinion that "The total amount for which [the] tangible personal property is sold" means and includes all amounts paid under the contract. In order to acquire the machinery, "A" was required to pay \$95,000. That the parties may have allocated this amount, for their own purposes, between "processes" and "machinery" is of no relevance under the law.

Our recommendation will be presented to the Board for its consideration in due course.

Very truly yours,

Gary J. Jugum
Tax Counsel

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