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**STATE BOARD OF EQUALIZATION**

April 13, 1959

Gentlemen:

Your letter of April 6 to our Madera office has been referred to this office for reply, after being acknowledged under date of April 7 by J. R. Couly, District Tax Administrator, Fresno.

According to your letter you made three sales at retail of equipment, the first on November 3, 1958, the second on February 2, 1959, and the third on March 30, 1959. The question concerns the application of the 10% penalty under Section 6511 of the Sales and Use Tax Law upon the amount of the sale made on November 3, 1958, and interest, no return having been filed for the 4<sup>th</sup> quarter of 1958. As these were the only sales made by the District, Mr. Couly suggests that perhaps the district was not a retailer until the third sale was made on March 30, 1959, and therefore was not obligated to file a return at the end of the 4<sup>th</sup> quarter, at which time only one sale had been made.

In our opinion, the law did not require the filing of a return for the 4<sup>th</sup> quarter, only one sale having been made up to that time. The District did not become a retailer under Section 6019 until the making of the third sale, which occurred in the 1<sup>st</sup> quarter of 1959. Accordingly, payment of the tax with respect to all three sales will be considered timely if made on or before April 30, 1959, and no penalty or interest will attach to the amount of the sale made on November 3, 1958.

Very truly yours,

E. H. Stetson  
Tax Counsel

EHS:tl  
cc: Fresno - Administrator