



STATE BOARD OF EQUALIZATION

September 10, 1964

The B--- C---
XXXX --- Avenue
---, CA

ST -- XX XXXXXX

Gentlemen:

Your petition for redetermination dated November 14, 1963 has been referred to me for review. It is our desire to attempt to resolve the issue raised by correspondence.

The facts giving rise to the determination appear to be undisputed. The are: Petitioner owned and operated a farm. About September 1962 the farming operations were discontinued, the land leased, and a portion of the equipment sold to the lessee for \$33,600. Additional sales of farm equipment were made in January and June 1963 for \$920 and \$1,800, respectively. Our audit staff considered these sales to be subject to sales tax.

As you are aware, sales tax applies to gross receipts from retail sales of retailers. Petitioner is a "retailer" with respect to its café operation and holds a seller's permit. The questions which your petition raises appear to be (1) were the farming operations so distinct from the café operations as to be a separate and distinct activity for sales tax purposes and (2) assuming they were, were the sales sufficient to constitute a taxable activity.

Section 6367 of the Sales and Use Tax Law exempts from tax the receipts from "occasional sales". Section 6006.5(a) defines "occasional sale" as including a sale of property not held or used in the course of an activity requiring the holding of seller's permit, provided the sale is not one of a series sufficient in number, scope and character sufficient to constitute an activity requiring the holding of a seller's permit.

Since our audit report does not indicate that the farm was used to supply food products for sale through the café, we shall for the purpose of this letter assume that the farming operations were a separate activity from the café for the purpose of Section 6006.5(a). Accordingly, our inquiry is limited to whether the three sales were sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit.

Section 6019 provides that every corporation making more than two retail sales within any 12-month period is a retailer. Here, petitioner made three sales within a 12-month period. It is a "retailer" under Section 6019. This appears to satisfy at least the number requirement of Section 6006.5(a).

For “scope” and “character” we may look to the nature of the property sold, the purpose for which it was sold, and to the amount of the consideration received. In each case the property sold was farm equipment. Each sale was to a farmer presumably for use on his farm. The consideration received from each sale was substantial, the smallest being \$920.

From this we must conclude that the sales were sufficient in number, scope and character to constitute an activity requiring the holding of a seller’s permit. We cannot recommend any adjustment. However, if you disagree with our conclusions and desire an oral hearing before the Board please advise us within 30 days. Such hearings are held monthly in Sacramento. Any request for a Board hearing should be addressed to: State Board of Equalization, 1020 N Street, Sacramento, Attention R. N. Zambelich.

Very truly yours,

John H. Murray
Associate Tax Counsel

JHM:mm

cc: Mr. Charles H. Otterman
Fresno – District Administrator

Note to Petition Unit. If petitioner requests an oral hearing please schedule the petition for Board hearing. If no request is made schedule for redetermination.