

October 21, 1952

Following receipt of your letter of October 6 the Board took under consideration your petition for redetermination of retail sales tax measured by receipts from sales of horses in this State.

You indicate that you will agree with our determination provided the one sale in 1945 be considered as an occasional sale and eliminated from the measure of the determination. You have not heretofore presented this argument and, upon review of the file, we find that, although you made only one sale in California in 1945, you made nine sales outside of California in that year which are apparently retail sales, although our records do not indicate with certainty that this is the case. Our records also indicate that you made at least four sales in each calendar year since 1942 outside of California. We are unable to regard the one sale in California in 1945 as an exempt occasional sale. In our opinion a person is a retailer as defined in the Sales and Use Tax Law, regardless of where sales are made if the sales are sufficiently numerous to constitute him a retailer had they been made in California. Section 6015 defining retailer does not limit the sales made which constitute a person a retailer to sales made in California. Thus, a person who has the status as a retailer is, in our opinion, subject to the tax with respect to any retail sales made in California not otherwise exempt. Accordingly, unless your entire sales made in any location in any twelve-month period in which the 1945 California sale was made amounted to two or less retail sales, we are unable to recommend the exclusion of this sale from the determination.

Will you kindly advise us whether you still desire to be heard before the Board or, in view of this explanation, you will withdraw your request for a hearing.

Very truly yours

E. H. Stetson

Tax Counsel