



STATE BOARD OF EQUALIZATION

11-16-59

At the preliminary hearing held on 10-27-59, on the petitions for redetermination filed on behalf of the above taxpayers, we advised you that we are currently litigating the question of whether simultaneous transfers of all partnership interests in a partnership to a third person could constitute a sale within the meaning of §6006(a) of the Sales and Use Tax Law.

The cases to which I referred are Northrup, et al. v. SBE, LASC # 705955 and 705956. Upon returning to our office, I found that these actions were settled by stipulated judgments under which judgment was entered for the board in one action and for the plaintiffs in the other action. The attorneys for the plaintiffs were L--- and W--- of L--- A---. The effect of the stipulated judgments is that the question presented will not be resolved on its merits in those actions.

We think that a simultaneous transfer by all of the partners of their respective partnership interests constitutes a sale within the meaning of §6006(a) of the Sales and Use Tax Law, which defines a sale as including any transfer of title or possession, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. Such transfers are sales in that they contemplate and involve the transfer of title and possession of tangible personal property for a consideration.

Although in form there is a transfer of the partners respective "interests" in the partnership, they are in fact transfers of the partnership property and were considered by the parties as transferring to the corporation the specific partnership property owned and used in the partnership business. The partnership business here consisted of operating a restaurant and thus, the property was held or used in an activity requiring a seller's permit and cannot be considered as the subject of an occasional sale within the meaning of §6006.5(a) of the Sales and Use Tax Law.

For the reasons expressed above, we cannot recommend any adjustment in the measure of tax. In view of the fact that the pending litigation has been settled without a decision on the merits, you may desire an oral hearing before the board on your petitions for redetermination. If such a hearing is desired, will you please advise us at your early convenience.