



STATE BOARD OF EQUALIZATION

July 30, 1958

K--- and S---
Attorneys at Law
XXX S--- D--- T--- &
S--- Building
--- ---, California

Attention: Mr. N--- A. K---

Re: M--- D. T--- I--- V---
Account - - XXXXX

Gentlemen:

This letter concerns your client's claim for refund of April 22, 1958. We are sorry about this tardy reply. However, the claim involves the question of the application of the California Sales and Use Tax Law to an escrow situation, and this entire subject has resulted in an extensive research project in considering your client's question and problems involving escrows of other persons. This review has recently been completed.

It is the opinion of the legal staff that the sales tax properly applies to the factual situation in question. Therefore, we shall recommend to the Board that your client's claim for refund be denied. Our reasons are as follows:

It appears that your client, Mr. M--- T---, entered into a contract of sale of the restaurant with Mr. T--- K---, Mr. J--- K---, and Mr. G--- T--- M---. The parties entered into an escrow agreement. The intended purchasers deposited part of the purchase price in escrow and agreed to pay the balance in the manner described in your letter. Immediately after the execution of the contract, the intended purchasers took possession of the premises and began active conduct of the business.

Application was made for liquor license transfer, but the license was not transferred until February 1958. At this time the partnership had dissolved and the withdrawing partners, K--- and M---, had signed all their rights to T--- K---.

The original partnership and later K--- become delinquent in various obligations. As of April 1958, there was also a delinquency of \$2,500 on the promissory note which was payable to your client pursuant to the agreement.

In view of the delinquency of the partnership and Mr. K---, your client canceled the escrow and assumed the payment of certain of the liabilities.

Section 6006(e) of the California Revenue and Taxation Code defines a sale, for sales tax purposes, as including a transaction whereby the possession of property is transferred, but the seller retains his title as security for payment of the price. Furthermore, Section 6006(a) defines a sale, in part, as including any transfer of possession of tangible personal property for a consideration found by the Board to be in lieu of a transfer of title. We have concluded, under the facts of this case, that even though there was not a transfer of title because conditions precedent to closing of the escrow were not satisfied, there was nevertheless a sale by way of transfer of possession, pursuant to Section 6006 of the aforementioned code.

In view of the fact that the parties expressly provided in the contract that the agreed value of the fixtures and equipment was \$10,000, the parties specifically agreed upon that as the sale price and pursuant to the first paragraph of Section 6012 of the code, the taxable gross receipts would be \$10,000 notwithstanding the fact that in reality the fixtures and equipment in question may actually have a lesser value. In view of the above conclusions, we shall schedule the matter for consideration by the Board. We would appreciate it if you would inform us within 30 days whether your client wishes a Board hearing. If a Board hearing is not desired, you will receive formal notice of action taken by the Board in due course.

Very truly yours,

W. W. Mangels
Associate Tax Counsel

WWM:vad

cc: --- --- - Admin.