



STATE BOARD OF EQUALIZATION

April 14, 1958

Mrs. A--- B--- and
Mrs. C--- P---
XXX – XXX East --- St.
--- --- XX, California

Ladies: AL – XXXXX
 C--- P--- and
 A--- B---
 dba --- Lodge

 AL XXXXX
 R--- W. C--- and
 T--- O---
 dba XXX C---

 AL XXXXX
 A--- B--- and
 C--- P---
 dba XXX C---

From the facts it appears that on or about September 1, 1954 you, as sellers, and R--- W. C--- and T--- O--- as intended purchasers, entered into a contract whereunder you agreed to sell to the said named intended purchasers your business located at XXX – XXX East --- St., --- ---. Concurrent therewith you also apparently filed an application with the intended purchasers for the transfer of an on-sale liquor license connected with the said business. The agreement in question also involved an escrow opened with the V--- Escrow Co. At the time the agreement was executed, the intended purchasers operated the business for a period of approximately seven months. However, due to the fact that the application to transfer the liquor license was denied, the transaction was cancelled and the business was returned to you.

The question is whether or not the above-described transaction constitutes a sale under the Sales and Use Tax Law.

Since the escrow did not close, there was no transfer of title. However, under the Sales and Use Tax Law there is still a sale if (1) there is a transfer of possession which the Board finds to be in lieu of a transfer of title or (2) if the sellers retain title only to secure payment of the purchase price.

Ms. A--- B---, et. al
AL 65598, AL 67554, and
AL 69447

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Where there is an onsale liquor license held in connection with a business, the title to assets of the business cannot be transferred until the license is transferred. Therefore we are of the opinion that the transfer of possession by you to the intended purchasers was not a transaction where you retained title only to secure payment of the purchase price, nor was it a transfer of possession in lieu of a transfer of title.

Since it appears that the transfer to the intended purchasers by you did not give rise to any sale, we shall recommend to the Board that your claim for refund in the sum of \$90.00 be granted.

Very truly yours,

Warren W. Mangels
Associate Tax Counsel

WWM:rg

cc: --- --- -- Admin.