



STATE BOARD OF EQUALIZATION

1481 Ruling-79, tax accountability by retailer operating business within area under his control for sales by persons not holding seller's permits.

July 22, 1957

Dear X-----,

We have given careful consideration to the contents of your letter of July 8 by which you object to a proposed determination under the Sales and Use Tax Law against your client named above insofar as it is measured by receipts from sales of concessionaires operating on your client's premises but who do not hold seller's permits.

One of the grounds of your objections is that the persons making sales on your client's premises are not "concessionaires" within the proper definition of that term. We believe, however, that the term as used in Ruling 79 is properly interpreted broadly enough to include individuals operating as are the individuals in question.

Looking to the reason for the ruling, we believe it is clear that the intent of the ruling was to require tax accountability by a retailer operating a business within an area to all intents and purposes wholly under his control, for sales transactions by persons not holding seller's permits, but which the retailer allows to occur on such area and which, insofar as the public is concerned, might reasonably be believed to be his own transactions.

Your question whether such a ruling is authorized by the terms of the statute. Under the authority of Section 7051 of the Revenue and Taxation Code this Board may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of the Sales and Use Tax Law. While any rule or regulation prescribed by the Board must, of course, be reasonable and not contrary to law, the Courts have held that rule-making bodies such as this Board have a wide discretion in exercising the power to classify. As long as the rule works uniformly upon all persons in a class and the classification is based upon some natural or reasonable distinction, the classification is not invalid and will not be overthrown unless plainly arbitrary. (See *General Electric Company v. State Board of Equalization*, 111 Cal. App. 2d 180.)

The ruling that retailers are liable for the tax liability of concessionaires operating on their premises has been consistently applied in all situations appearing to fall within the reasonable intendment of the ruling we do not believe its application in the instant case is unreasonable or arbitrary, or not a reasonable exercise of the rule-making power of the Board.

We cannot agree with your interpretation that Ruling 79 does not state that a retailer is liable for the sales by concessionaires operating on his premises. We cannot so interpret the third and fourth paragraphs, in view of the positive statement in the third paragraph that a retailer is liable for the tax. It seems to us that your construction would give no meaning to the third paragraph.

For the foregoing reasons, we are unable to agree with your conclusions, but your client will be afforded an opportunity to be heard before the Board if it desires a hearing.

Very truly yours,

E.H. Stetson
Tax Counsel

EHS:ds
Cc: X-----