



STATE BOARD OF EQUALIZATION

March 30, 1953

Attention: X-----

1657.80 Liability of Retailer for Tax Upon Sales Made by Concessionaires Who Have Not Obtained Seller's Permits. Under Ruling 79, a retailer who leases space on his business premises to concessionaires is responsible for the sales tax with respect to all operations in such premises, except as to those tenants or concessionaires who have obtained seller's permits from the Board. 3/30/53

Gentlemen:

This is in answer to your letter of March 24 concerning the liability of your client, X-----, for sales tax on account of sales made by persons to whom X----- rents tables in the yard adjacent to a building owned by X-----, who conducts auctions in the building and makes auction sales of livestock and poultry outside the building. You state that some of these tenants hold sellers' permits and remit the tax with respect to their operations but that other tenants do not hold permits. It is with respect to the operations of these tenants that your inquiry relates.

In your letter you quote from Sales and Use Tax Ruling 79 pursuant to which a retailer is liable for the payment of tax measured by receipts from retail sales made in his place of business by operations of concessions therein unless the concessionaires obtain permits from the Board. If the tenants in questions are "concessionaires", we believe that, under the ruling, your client is liable for the tax with respect to their operations.

We do not believe that this Board would have any authority to enter into an agreement with your client to pay over to this Board a stated amount as the estimated tax which would be due from the business transacted by the tenants in question. Whether X----- is a "concessionaire" within the meaning of Ruling 79 appears to be determinative of his liability. While we do not take the position that a lessor is liable in all cases for the sales tax obligations of his lessees, we think that, when a retailer operates a business within an area which to all intents and purposes is wholly under his control and permits a concessionaire to operate therein, the retailer is responsible for the sales tax with respect to all operations in such premises within a reasonable interpretation of Ruling 79.

The situation at the auction yard, as described to us by X----- is such that the cost of enforcing each individual tenant or concessionaire to secure a seller's permit is greatly in excess of the tax liabilities of such tenants or concessionaires.

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 no invalid and will not be overthrown unless plainly arbitrary. (See General Electric Company v. State Board of Equalization, 111 A.C.A. 182.)

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 and, upon the basis of the authorities cited, we do not believe its application in the instant case is unreasonable or arbitrary or that it would not be upheld by the Courts as a reasonable exercise of the rule-making power of the Board.

Very truly yours,

E.H. Stetson
Tax Counsel

EHS:ph

cc: Fresno – Tax Administrator