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**STATE BOARD OF EQUALIZATION**

August 20, 1970

Dear Mr. X-----,

Your letter dated July 28, 1970 addressed to the Board of Equalization, Los Angeles, has been referred to me for reply.

You ask whether California may collect sales tax on legal costs of a proceeding before the Supreme Court in Washington D.C., where a California litigant pays such costs in California. These costs consist of docketing fees, costs of (required) printing of the petitions, appendices (consisting of the judgment of federal courts on lower levels), briefs, etc.

In this regard, you assert that this is a "federal activity" exempt from sales tax under the Supremacy and Commerce Clauses of the United States Constitution. Such costs are recoverable by the successful litigant as "court costs" but you have been advised that no recovery of any sales tax imposed upon such costs will be allowed.

As you know, California sales tax applies only with respect to sales of tangible personal property (property). Thus, costs such as docketing fees are not subject to sales tax. Pursuant to Section 6051, the sales tax is imposed upon retailers for the privilege of selling property at retail, and its imposition is independent of and unrelated to any use of the property which might be made by purchasers thereof. Pursuant to Section 6006, "sale" means and includes the producing, fabricating, processing, printing, or imprinting of property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting, and also, the transfer of title or possession of property which has been produced, fabricated or printed to the special order of customers for a consideration. Thus, charges by printers for producing, fabricating, processing, printing, or imprinting property, including petitions, appendices, briefs, etc., which is sold and delivered to customers in California are subject to sales tax even though the property is to be used in proceedings before the Supreme Court in Washington D.C.

Section 6352 provides, in part, that sales tax does not apply to gross receipts from the sale of property the gross receipts from the sale of which California is prohibited from taxing under the United States Constitution. However, we do not think that it can be successfully contended that California sales tax violates the Supremacy Clause under these circumstances, and it has been our position that the sale and delivery of property to customers in California, whether or not their disclosed or undisclosed intention is to transport the property outside the state and whether or not the property is actually so

transported, is subject to sales tax and does not violate the Commerce Clause (Ruling 55 (a) (2) (B), copy enclosed).

If a contract with a printer requires the printer to ship petitions, appendices, briefs, etc., to the Clerk of the Court in Washington D.C., and if in fulfillment of the contract the printer, in fact, so ships them, the sale will then be exempt from sales tax as a sale in interstate commerce. This will be the case even if they are delivered to the purchaser in California for inspection prior to being shipped. In such cases, it has been our position that a sale in interstate commerce, exempt because the seller under the contract is required to ship the property to a point outside the state, is not rendered taxable by the fact that the purchaser is permitted to inspect the property prior to the seller's shipment thereof (Cal. Tax Servo Anno. Nos. 1517.80 and 1521.25). Again, however, charges for any petitions, appendices, briefs, etc., not so shipped but sold and delivered to a purchaser in California will be subject to sales tax.

Very truly yours,

J. Kenneth McManigal  
Tax Counsel

JKM:smb [lb]