



STATE BOARD OF EQUALIZATION

January 31, 1951

The B--- Co., Inc.
XXXX --- ---
--- ---, California

Attention: Mr. C. P. S---

Re: -- XXXX

Gentlemen:

This is with reference to your letter of December 14, 1950, in which you requested information as to the application of the sales tax with respect to tooling.

The basis principles governing the application of the tax with respect to tooling and other manufacturing aids is set forth in Sales and Use Tax Ruling 14, copy enclosed. After much consideration of the problem and a number of conferences with representatives of the industry and the California Manufacturer's Association an interpretation of Ruling 14 was issued under date of July 10, 1950, in the form of a general bulletin issued by the Sales Tax Administrator. A copy of this bulletin is enclosed.

As respects the specific transaction mentioned in your letter, it is not possible for us to determine exactly the application of the tax without additional information. The provisions of Ruling 14 and the interpretive bulletin should, we believe, enable you to determine the application of the tax in view of your knowledge of all of the circumstances of the transaction.

An important consideration, as you will observe, to the taxability of any sale is whether the purchaser of the property sold sells it before he uses it or sells it after he uses it, or purchases it in the capacity of agent. Where property is used before it is sold, the tax applies upon the sale to the user. Where the property is sold before it is used, the sale to the person who sells it before use is not taxable since it is a sale for resale. The matters to be considered in determining whether property is sold before or after use are set forth in the second paragraph of the bulletin.

Where the person who uses tooling or other manufacturing aids purchases it as agent of another, the sale to the agent is taxable for that is a sale to the principal, but there is no further tax due when following use the agent turns over the tooling or other aid to his principal, since there can be no sale between a true agent and his principal. [i.e. – the principal already owned it, title passed directly from the vendor to the principal, the agent never having taken title at all. DHL 3/11/90]. Thus, the answer to your question (1) depends upon the various considerations mentioned.

In answer to your question (2), if you perform work for an out-of-state customer and pursuant to your contract with him deliver the finished work to him at a point outside the state for use outside the state, you would not be obligated to pay sales or use tax with respect to the sale of the finished work. If, however, you purchased tooling and used it in this state in producing the finished work, the tax would apply with respect to the sale of the tooling to you. In the event you resold the tooling to your customer prior to using it but thereafter used it in this state, your sale of the tooling to your customer would be taxable for the sale would occur in this state where the tooling is located and would not be exempt as an interstate sale, since you do not in order to fulfill the sales contract ship it to a point outside this state . [Prior to any use. i.e., even if the TP must ship the tooling out of state after use pursuant to the contract of sale, tax would nevertheless apply. DHL].

In answer to your question (3), the nature of your customer's contract with the United States Government would affect the tax problem insofar as the contract would indicate whether property that you or your customer might use in the manufacturing process is titled in the Government before use. If it is so titled, then its purchase would not be a taxable transaction as the purchase would be for resale and the ultimate sale to the Government would be exempt under section 6381 of the Sales and Use Tax Law exempting sales to the United States (excepting corporate instrumentalities not wholly owned by the United States).

In answer to your question (4), whether there is so-called "double taxation" or not with respect to the purchase of manufacturing aids depends entirely upon whether the parties handle the transaction in such a way as to prevent there being more than one retail sale. If there is more than one retail sale of tooling, the tax applies to each retail sale, unless for some other reason there is an exemption such as the exemption of sales to the United States. The provisions of the bulletin interpreting Ruling 14 indicate under what circumstances sales can be regarded as sales for resale rather than retail sales where the purchaser is a manufacturer purchasing patterns, tooling, or other manufacturing aids for use in manufacturing.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph
cc: Mr. Wm. Thomson