

M e m o r a n d u m**460.0022**To: Business Tax Attorneys
Hearing Officers

Date: June 4, 1981

From: Donald J. Hennessy

Subject: Interest on Refunds

The reoccurring question of who is entitled to the interest on sales and use tax refunds was discussed by the legal staff on May 29, 1981. The discussion assumed that sales or use tax must be refunded to the person who paid such tax to the Board and that the Board can condition such refund of tax on the person receiving the refund paying it over to the customer who paid tax reimbursement. The conclusion reached was that the Board cannot condition payment of the refund of tax on the paying of the interest over to the customer. Likewise, the Board cannot insist on the interest being paid over to the customer.

While the Board can rely on Decorative Carpets, Inc. v. State Board of Equalization, 58 Cal.2d 252 for conditioning the payment of a tax refund on the refund being paid over to the customer, Decorative Carpets makes absolutely no mention of interest. Particularly after January 1, 1979, to insist that interest be paid to the retailer's customer would further erode our position that tax reimbursement is solely a matter of contract. To so insist would also force the Board to allocate the interest between the retailer and the customer since the tax is paid to the Board by the retailer on an accrual basis while payments by the customer to the retailer are often on an installment basis.

DJH:po

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