



STATE BOARD OF EQUALIZATION

June 4, 1957

D---, O---, B---, S--- and B---
Attorneys at Law
F--- N--- – S--- L--- Building
--- X, Minnesota

Attention: Mr. J--- W. W---

SY -- XX XXXXXX
N---, K--- and Company

Gentlemen:

We have made a thorough review of the file and the facts developed at the preliminary hearing. It is the view of the staff that the package display stands were sold during the period July 1, 1953 to June 30, 1955, and furthermore that the returned merchandise exclusion is not applicable. Accordingly, we shall recommend to the Board that the tax be redetermined without adjustment.

We regard the sales as having been made in that latter period because of the fact that the contract specifically provides for purchase of the display stands. There is a specific price therefore. It is intended that title be vested in the customer in order that the local personal property tax shall be the customer's responsibility. Furthermore, the stands are at the customer's risk while at the customer's location. In addition, the customers are not under a duty to resell the stands back to petitioner but this is merely optional with the customers. In view of these factors the conclusion seems inescapable, in our opinion, that there is a sale of the stands to the customer, with respect to the second portion of the period under audit.

We are unable to agree that the returned merchandise exclusion should apply. The contract is worded in the phraseology of purchase and an option to resell. During the time the stand is in the hands of the customer it is used by the customer for the purpose intended as contemplated by the original agreement. This is not a situation where there is a return of merchandise because of objective or subjective dissatisfaction. We do not believe the statute is properly interpreted to regard as nontaxable a situation where the gross receipts arose from a transaction executed as intended, that is where use was made of the merchandise as intended, and where under the original agreement the customer was merely reselling to the original vendor pursuant to an option. We do not believe that an option to resell and the execution of that option constitutes "returned" merchandise as that term is used in section 6012(b) of the California Sales and Use Tax Law, pamphlet copy enclosed.

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If you are not in agreement with our findings and desire a Board hearing in Sacramento, such a hearing will be arranged. Please let us know of your wishes.

Very truly yours,

Warren W. Mangels
Associate Tax Counsel

WWM:rg
Enclosures

Copy of Law
cc: Oakland – Auditing
cc: Chicago (CH)