



STATE BOARD OF EQUALIZATION

December 14, 1953

We have reviewed your letter of December 1, the bill of sale dated 4-30-51, the compromise agreement of December 1952, your earlier correspondence and several reports from our district office.

It is our opinion, based on all the available facts, that the tax was properly redetermined; in other words, that the transfer of the garage fixtures and equipment was properly subject to the sales tax.

It appears that the buyer was given possession of the garage and, in fact, was in possession of the business and fixtures for over one year. The seller understood that he performed his obligations under the original agreement, but the buyer contended that he was not secure in the transaction claiming that Mrs. "X" did not subscribe her signature to the original bill of sale, that the goodwill was transferred, but that "X" kept doing business in the name of "X Garage and X Motors," that "X" removed merchandise from the premises which were supposed to have been transferred, and that "X" kept a key to the garage. Therefore, after the seller filed suit to foreclose the mortgage, an out-of-court settlement was reached whereby the seller retained the down payment (\$1,300.) and received another sum (\$2,250.) in reimbursement of merchandise used. The purchaser returned all of the assets sold.

§6006(c) of the California Sales and Use Tax Law defines a "sale," for sales tax purposes, as including a transaction whereby the possession of property is transferred with the seller retaining the title as security for the payment of the price. The taxable event arises when the property is transferred. See also the last paragraph of Sales and Use Tax Ruling 61 (copy enclosed). Obviously, "old" Ruling 64 (copy enclosed), which has since been amended to do away with the 90 day requirement but which was in effect when the property was returned, was not satisfied. In fact, present Ruling 64 (copy enclosed), in effect since 9-9-53, would also not be satisfied since all consideration was not restored.

Accordingly, the fact that the sale was rescinded by mutual agreement does not result in nontaxability.

In view of the foregoing, we would suggest that the amount of tax, penalty, and interest be paid. A claim for refund should be filed with this board if you still are of the opinion that the transaction is not properly subject to the tax. The claim must be in writing but it may be in letter form. It should state the specific grounds upon which the claim is founded.

The amount now due is \$208.94 including interest computed to 12-31-53. Additional interest of .92 per month will accrue after that date.