



STATE BOARD OF EQUALIZATION

March 17, 1966

Attention: REDACTED TEXT

Gentlemen:

We have completed our review of your petition for redetermination of sales and use taxes.

Your protest involves interpretation of the scope of the exemption for transportation charges provided by § 6012(g) of the Revenue and Taxation Code. Insofar as pertinent here, § 6012(g) excludes from the definition of gross receipts:

“Separately stated charges for transportation from the retailer’s place of business or other point from which shipment is made directly to the purchaser,…”

Sales and use taxes ruling 58 interprets shipment “directly to the purchaser” to include:

“...shipment...directly to a place specified by the purchaser,…”

However, the scope of the exemption is limited to the final transportation of the property to the purchaser as express in the enactment which created the exemption. It contains the following language.

“It is not the intent of the Legislature in the enactment of this act to affect the application of those sales and use tax to any charges other than those for the final transportation of property to the purchaser.” (Stats. 1962, ch. 3, p. 8.)

It is our opinion that “final transportation” means only transportation which terminates in a present sale and delivery of the goods to the purchaser. Any other interpretation would not give effect to the statutory requirement that the shipment be made directly to the purchaser.

After studying the “stocking agreement” and all of the other information presented, we have concluded that the property was not delivered to the purchaser and that no present sale was made. Prior to the time the goods were required by REDACTED TEXT or a period of 90 days therefrom, whichever first occurred, you were required to store the goods at your own expense, pay any property taxes assessed, and assume all risk of loss to the goods. These continuing obligations and the absence of the right to receive the price prior to the time the goods are required by REDACTED TEXT are totally inconsistent with a present sale.

We have also concluded that the bare recital of transfer of title to REDACTED TEXT contained in the letter amendment dated May 1, 1963, did not affect a present sale of the property. In substance, no change resulted since the right and obligations of the parties with respect to the goods remained precisely the same as before this date.

In view of the above, we shall recommend that the board deny your petition for redetermination. Please review our letter and advise, in view of what is set forth herein, if you still desire an oral hearing before the board of your petition. In the event we do not hear from you within 30 days from this date, we shall conclude that no such hearing is desired and schedule your petition for final action on the board's nonappearance calendar.

Very truly yours,

W. E. Burkett
Associate Tax Counsel

WEB:hm

cc: Hollywood – Subdistrict Administrator

Attached are two copies of the Report of Hearing Officer dated 3-10-66 which has been approved. This hearing was held in Los Angeles on January 5, 1966.