

**STATE BOARD OF EQUALIZATION**

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March 9, 1953

Mr. J. R--- P---
Certified Public Accountant
P.O. Box XXX
XXX South --- Street
---, Montana

Dear Mr. P---:

You request information as to the application of the California use tax to transactions by one of your clients.

(1) A piece of equipment was purchased and sent to California and the use tax paid upon this equipment. The Montana operation also purchased a similar piece of equipment which was shipped to California where both pieces of equipment were tried out to determine which proved to be best fitted to the local requirements. As a result, the piece of equipment which had been ordered for the California operation was sent to Montana and the piece of equipment ordered for Montana was retained in California.

You ask whether the use tax paid on the piece of equipment that was originally ordered for the California operation should be considered as paid on account of the piece of equipment originally ordered for Montana but retained in California.

It is our opinion that the use tax is due with respect to each of the pieces of equipment, since each piece of equipment was shipped into California and tested in this state to determine which best fitted the local requirements. (We assume from your letter that your client had not yet acquired title to the equipment ordered for the Montana operation, at the time it was decided to ship this equipment to California.)

The use tax is imposed upon the storage, use, or other consumption in this state of tangible personal property purchased from a retailer. (See Sections 6201 and 6202 of the California Sales and Use Tax Law, copy enclosed.) Use is defined in Section 6009 as including "the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business." The fact that the use may have been for but a short period of time is immaterial. (See *Southern Pacific Co. v. Gallagher*, 306 U.S. 167.)

(2) Your client purchased certain rollers which were placed in stock for possible use. Through a change in the operation, it developed that these rollers would not be used although a use tax had been paid on them. They were traded for a power unit which is now in use.

You ask whether it is necessary to pay a use tax on the power unit or whether you may pay use tax on the difference in value on the two items.

In this situation it would seem that your client would be entitled to a deduction with respect to the use tax paid on account of the rollers, see Ruling 71, copy enclosed, in the event that there was no other use of that property while it was being held in this State, and provided your client is a "seller" or "retailer" as defined in the Sales and Use Tax Law. Otherwise, a claim for refund could be filed.

If you have any further questions with respect to this matter, please feel free to call upon us.

Yours very truly,

E. H. Stetson
Tax Counsel

JHM:ja