



STATE BOARD OF EQUALIZATION

September 14, 1964

Mr. L. A. E---
Administrative Assistant
F--- B---, Inc.
XXXXX --- ---
---, Michigan XXXXX

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Dear Mr. E---:

Upon returning to my office today after a week's absence, I found your letter of September 1, following up your letter of August 14, 1964, concerning certain California sales and use tax questions. After describing your business activities, you ask three questions which we shall answer in order.

1. There is no provision in California law or rules and regulations exempting retail sales of equipment by California vendors delivered to the buyer or his representative in this state even though the equipment is shipped outside the state by the buyer before it is actually used in production. Sales and Use Tax Ruling 55, copy enclosed sets forth the application of the tax with respect to sales which precede or involve interstate commerce shipments (see particularly paragraph (a)(2)(B)).

2. There is a provision of our law which exempts from the use tax any equipment purchased from out-of-state vendors under the circumstances rendering the sales tax not applicable, provided the actual end use of the equipment is made solely outside this state. Section 6009.1 of the California Sales and Use Tax Law provides as follows:

“‘Storage’ and ‘use’ do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the State for use thereafter solely outside the State, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used solely outside the State.”

In our opinion, the testing of equipment* in this state which is not used in production here and is subsequently used solely outside this state, meets the requirements of this section for exemption from use tax.

3. This board as an administrative agency, is without power to create exemptions for which the statute does not provide and which do not already exist by virtue of constitutional restrictions. Thus in the case of retail sales by California vendors delivered to the buyer or his representative in this state, we are unable to provide an exemption by rule or regulation. This would require legislative action.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:md

Enclosure

cc: Out-of-State – District Administrator

*That is, mere testing of the equipment in question to ensure it is not defective would not be a "use" disqualifying the transaction from the exclusion provided by § 6009.1. If, however, the equipment is used to test other property or to perform any other test, that use would be subject to use tax. DHL 5/1/91.