



STATE BOARD OF EQUALIZATION

September 28, 1971

A--- F---
XXX --- --- Street
--- ---, CA XXXXX

SR -- XX XXXXXX

Attention: Mr. J--- A. L---
President

Gentlemen:

Reference is made to the June 9, 1971 preliminary hearing regarding your August 20, 1970 petition for redetermination with respect to tax assessed for the audit period October 1, 1966 to march 31, 1970. At the hearing, you questioned the inclusion of the amounts of \$209, \$6,898, and \$459 in the taxable measures as trade-in allowances – taxable sales, Items C, F, and G of the audit report respectively. This is to advise you of the conclusions we have reached with respect to these disputed items.

You asserted that in view of the circumstances which gave rise to the transactions in question, those amounts constituted amounts of discounts taken which were not subject to tax rather than amounts of trade-in allowances which were subject to tax. You described those circumstances as follows:

As an incentive to customers to maintain your titles in their libraries in a good condition and thus, enable you to retain your reputation as a producer of quality films, and to enhance goodwill, you informed your customers through your price lists that an old or damaged print could be replaced with a new print of the same subject at a 20 percent replacement discount, provided the old or damaged print was returned to you for destruction. This practice was industry-wide.

When a customer took advantage of this offer, your billing to him showed the list price of the print, the replacement discount, and a net price, and tax was imposed upon the net price. The old or damaged print returned, being of no value to you, was destroyed by axe and discarded.

Sales and Use Tax Law section 6012 provided, in part, that “gross receipts” mean the total amount of the sale price of the retail sales of retailers, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the seller to the purchaser but excluding cash discounts allowed and taken on sales. Sales and use tax ruling No. 65, Merchandise Traded In, provided in part, that the amount upon which tax was computed included the agreed allowance for property traded in.

By letter dated August 3, 1965, Mr. James W. Tieman, Los Angeles District Administrator, advised [B] with respect to its replacement policy (new prints were furnished at one-third off the list price if old prints were returned), that the one-third off the list price would not be regarded as a trade-in allowance on an old print and that sales tax could be computed on the net selling price of the new print if [B] billed the customer as follows (list price of new print: \$100.00):

“Sales price of merchandise	\$66.67
[at 1/3 off list]	
Sales tax @ 4%	<u>2.67</u>
	\$69.34”

As your replacement policy is comparable to that of [B], we will not regard your 20 percent replacement discount as a trade-in allowance on an old print. Thus, as you would have similarly billed a customer

(Sales price of new print	\$100.00
Less 20% discount	<u>20.00</u>
Net sales price	80.00
Sales tax @ 4%	<u>3.20</u>
	\$ 76.80),

sales tax could be computed on the net selling price, and we are recommending that these amounts be deleted from the taxable measures. You will receive official notice of the board's action in due course.

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM:smb