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**STATE BOARD OF EQUALIZATION**

August 18, 1964

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In answer to your letter of August 13, we advise that sales tax applies to the sale of earth if the sale is made in the form of tangible personal property by a retailer. Sometimes a landowner will grant a person the right to enter upon his land and remove earth therefrom. This does not constitute a sale of tangible personal property since the earth is converted to personal property by the act of severance performed by the purchaser. The Attorney General has ruled this type of transaction not to be subject to the sales tax.

On the other hand, a landowner may sell earth which he has removed or which exists in the form of tangible personal property. Such a sale is taxable unless the seller is a nonretailer and makes not more than two sales in any 12-month period. Again, the seller could be a retailer of other commodities, and if the earth were not held or used in the activity requiring the holding of a seller's permit, the sale could be an exempt occasional sale under Section 6006.5 of the Sales and Use Tax Law.

Other circumstances affecting the application of the tax relate to whether the seller also undertakes to apply the earth to real property in its new location sufficiently to constitute him a construction contractor under sales and use tax ruling 11. As you will see, there are several factors entering into the determination of taxability. We are enclosing copies of the Sales and Use Tax Law and Ruling 11.

Very truly yours,

E. H. Stetson  
Tax Counsel

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