



STATE BOARD OF EQUALIZATION

November 8, 1968

Gentlemen:

We have reviewed the "B" lease dated January 22, 1948 enclosed with Mr. "L"'s letter of June 30, 1966 to Mr. E. H. Stetson, Tax Counsel. As suggested, we believe the words "and so long thereafter as oil or gas, or casing head gas, or other hydrocarbon substances, or either or any of them, is produced therefrom" in the habendum clause brings the lease within the holding of *Dabney v. Edwards*, 5 Cal. 2d 1.

Our stated policy has been to regard the transfer of casing, tubing, derricks, pipe, valves, fittings and other appurtenances attached or affixed so as to constitute fixtures as nontaxable, if transferred with a lease of indeterminate duration, although the lessee is permitted or required to remove the fixtures upon termination of the lease.

It is my understanding that the auditors making the audit of "P" were aware of our position. However, the file indicates that the audit was made in Texas and that the auditors requested the taxpayer to present information with respect to which leases were for an indeterminate period and which leases were for a fixed term of years. This information apparently was not available; nor, was information relating to which property might be located on any given lease. For this reason, the audit staff included as taxable the sale of pumps, motors, engines and other oil field machinery and equipment attached to the leased land.

In order to resolve this petition, we propose to refer it to the audit staff with directions to delete items included in the determination which are affixed to property under indeterminate leases. In order to do this, it may be necessary to review some of the leases. This procedure would obviate the necessity of holding a preliminary hearing and, if it meets with your approval, the matter could be resolved in this manner. In the alternate, we could reschedule the matter for a preliminary hearing, at which time, of course, evidence to support your position would have to be submitted.

We are making the same proposal to "S" with respect to the property purchased by it.

Please advise if the proposal that the matter be referred to the audit staff of adjustment consistent with our position expressed herein meets with your approval. Inasmuch as the matter has been under petition for some time, we are anxious to bring it to a conclusion.

If you have any questions regarding the matter, or desire further clarification of our position, please advise.

Very truly yours,

Jack D. Paulson
Tax Counsel

JDP:ab [lb]