



STATE BOARD OF EQUALIZATION

November 2, 1964

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Dear Sir:

This is in reply to your letter of October 27, 1964 concerning the application of sales tax with respect to the sale to you of a painting which has been consigned or left for sale at a gallery by an owner who is not the artist.

The Sales Tax Counsel opinion of April 6, 1964, cited in your letter, is based upon Opinion of Attorney General NS-3582, dated August 14, 1941. This opinion held that the yacht broker was not liable for payment of sales tax even though he had a limited right to possession of the yacht, but had neither the right to the beneficial use of the boat nor the power by his own act to vest ownership in another. The opinion held that in the absence of both of these elements, the broker could not be said to transfer title to the purchaser.

If the gallery in question does not have either of these powers, it would not be considered a retailer and the tax if applicable would depend upon whether the owner was engaged in business as a seller. The basic consideration is whether the party in physical possession of the property has the power to cause title to be transferred to the buyer or whether the person in possession is merely an intermediary or go-between bringing buyer and seller together, and does not appear as the seller on any documents used in connection with the sale.

Enclosed is a copy of the Opinion of Attorney General, NS-3582.

Very truly yours,

E. H. Stetson  
Tax Counsel

EHS:fb  
Enclosure

cc: San Jose – District Administrator