STATE BOARD OF EQUALIZATION

May 11, 1962

Z--- C---, Inc.
XXXX --- --- --- Street -- - XXXXX
Post Office Box XX
---, California

Attention: Mr. W--- M---
General Manager

Gentlemen:

In your letter of May 2, 1962, you request written approval of your procedure for satisfying your sales and use tax liability on Walk-In Coolers which are constructed by you. You indicate that your procedure has been to pay sales tax only on the materials used in manufacturing the coolers.

Walk-In Coolers are regarded as "materials" within the meaning of Sales and Use Tax Ruling 11, copy enclosed, in which case the contractor is the consumer of the materials and thus taxable at his cost provided that the Walk-In Cooler is affixed to and becomes an integral part of real property, and provided further that sales tax is not charged to the buyer on a marked up price for the "materials" (see Ruling 11).

So far as can be determined from your letter, you are following the correct procedure for "material" consumed in building Walk-In Coolers. Your letter indicates that you are aware that a different basis is applicable for sales of refrigeration equipment.

You also inquire if it is proper to pay the sales tax on the f.o.b. plant sales price of such items as perimeter wall shelving, gondolas, and special refrigerated cases excluding charges for delivery and installation of the items. Charges for installation labor on sales of such items are exempt from the tax under the provisions of Section 6012 of the Sales and Use Tax Law.

Under present law, delivery charges are exempt from the tax only where the buyer has acquired title to the goods prior to the transportation and provided that such charges do not exceed the amount paid to a carrier or a reasonable amount for delivery by the seller's own facilities. However, a change in the law has been made for delivery charges which will become effective as of July 3, 1962. Basically, the change provides that the delivery charges will be exempt irrespective of the point of passage of title where delivery is made by independent carrier; i.e., facilities other than that of the seller. Where delivery is made by the seller's facilities, they will still be taxable under the new law unless title has passed to the buyer prior to the transportation.

We trust the foregoing explanations will be satisfactory; however, if you have further questions, please feel free to write us again.

Very truly yours,

E. H. Stetson
Tax Counsel

By_____
W. E. Burkett

WEB:dm

Enclosure

cc: --- --- – Tax Administrator

STATE BOARD OF EQUALIZATION

June 27, 1962

Z--- C---, Inc.
XXXX --- --- --- Street
P. O. Box XX
---, California

Attention: Mr. R--- L. T---
Assistant Office Manager

Gentlemen:

This is in reply to your letter of May 29 in which you indicate that some doubts still exist in your mind as to walk-in coolers which you assemble and attach to real property. You state that these walk-in coolers are prefabricated at your plant and assembled as a prefabricated unit at the jobsite. They are affixed to the realty by means of fasteners and lag bolts.

As indicated in our previous letter, we regard walk-in boxes as "materials" in those instances where they are affixed to and become an integral part of the real property. On the other hand, if your job merely entails fastening a self-contained unit to the realty, which does not lose its identity and can be removed without damage to the realty, then we think the walk-in box in this instance would properly be classified as a fixture. In this latter instance, tax would then become due on the sales price of the material plus the fabrication labor involved prior to installation.

In your letter, you also indicate a desire for a ruling on the taxability of charges for delivery made as incident to sales of such items as gondolas, check stands, and special refrigeration cases. Where the delivery is made by your own facilities and title does not pass until after delivery, there is no basis for exempting the delivery charges from the measure of the sales tax. See enclosed copy of Ruling 58. This is not a matter of administrative discretion but a matter of basic statutory law which we are bound to follow. However, if you could provide in your contracts for the passage of title to the buyer prior to delivery and clearly indicate this in your agreement, the charges would be exempt from the tax provided that they represented a reasonable charge for delivery by your facilities.

We trust the foregoing will be sufficient to further clarify your doubts in these two areas. However, please feel free to write us again if you have additional questions.

Very truly yours,

E. H. Stetson
Tax Counsel

By_____
W. E. Burkett

WEB:dse
Enc

cc: --- --- – District Tax Administrator