



STATE BOARD OF EQUALIZATION

July 31, 1951

REDACTED TEXT

Gentlemen:

Following the filing of a petition for redetermination of our determination against you which we acknowledged on June 16, we have reviewed our file for the purpose of ascertaining whether or not the tax has been erroneously asserted.

It appears that the measure of the tax includes an amount which you have set up in your books as a contingent reserve for the federal amusement tax. If further appears that you have not filed returns or paid the federal amusement tax and that your liability for that tax is now the subject of litigation.

As indicated by Sales and Use Tax Ruling 57, copy enclosed, the amount of the tax imposed under Chapter 10, Section 1700(e) of the Internal Revenue Code upon persons receiving payments for "admission, refreshment, service, or merchandise, at any roof garden, cabaret, or other similar place furnishing a public performance for profit, by or for any patron or guest who is entitled to be present during any portion of such performance" may be deducted from gross receipts subject to the State sales tax. This deduction, however, may be taken only for the amount actually paid to the Federal Government. As you claim that the federal tax does not apply, and have not paid the same, it is our opinion that you may not take a deduction of any amount which you have merely set up as a contingent reserve. It is our suggestion, therefore, that you pay the amount of the tax which we have asserted against you measured by the gross receipts allocated to such a contingent reserve. You may then file a claim for refund of the tax in the event that you are unsuccessful in the current litigation with the Collector of Internal Revenue and are required to pay the federal tax.

Unless we hear from you within the next thirty days we shall schedule the matter for a hearing before this Board, as you have requested. In the event that you decide to pay the determination please complete and return the enclosed Waiver of Hearing.

Very truly yours,

R. G. Hamlin,
Tax Counsel

RGH:ja