**STATE BOARD OF EQUALIZATION**

February 19, 1954

Dear

We have considered the information and arguments presented in your letter of December 11, 1953, addressed to E. H. Stetson.

The agreement with --- provides for the sale of one unit of equipment for $9,500.00 and also grants to a non-exclusive, non-divisible license for the life of the patent to use that unit and as "rental for the use of the licensed unit" is required to pay a certain amount per case of food canned or a minimum of $2,000.00 per year. --- is given the right to terminate the agreement on thirty days' notice and be relieved of all liabilities except for the $9,500.00 purchase price and "accrued royalties".

In other instances, the equipment was sold and the license to use granted royalty free when the machine was not used for commercial processing . Royalties were payable when the machine should be used for commercial processing. Variations from this are set forth on pages 4 and 5 of your letter.

We think that the purchase price for the sale of the units and the royalites (or "rentals" as the --- contract terms them) are both subject to sales tax under the reasoning of Thys v. Washington, 31 Wn 2d 739; 199 P 2d 68 . Admittedly, that case is not on all fours with the present case. Nevertheless, the reasoning of the Washington court is applicable here. That court pointed out that the right to use an article is one of the most valuable elements of a property right therein. The sale of that article with a further exaction of compensation for its use for the purpose for which it is intended results in the purchaser paying the two amounts for the complete and unqualified title to the article. Both amounts are properly subject to sales tax since both are payments for the complete title.

Thus, here we have sales of canning equipment and the requirement that for commerical use certain royalties (or "rentals") be paid. Both payments are required if the purchaser is to have complete and unqualified title and use of the equipment. Both payments appear to us to be taxable gross receipts from the sale of tangible personal property.

In your letter you stress the fact that the agreements are all subject to cancellation by the purchaser on notice. This, we think, is important only in determining the measure of tax and not in determining the taxability of the transaction. In the absence of any

indication that the measure of tax is larger than amounts actually received by taxpayer, we think no adjustment should be made.

Notice of determination will, accordingly, be mailed to the company with a copy to you. A petition for redetermination may be filed within thirty days thereafter and a hearing requested before a hearing officer followed by a Board hearing if desired. Any further written arguments or data you desire to submit will, of course, be given full consideration.

Very truly yours,

John H. Murray
Associate Tax Counsel

JHM:hh

cc : San Francisco -Auditing