



STATE BOARD OF EQUALIZATION

September 22, 1966

Mr. F--- S. W---
Attorney at Law
M---, H---, S---,
A--- & W---
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S- -- XX XXXXXX
A. T--- & S---

Dear Mr. W---g:

In your letter of September 21, 1966, you request our advice as to whether in the following situation the sales tax applies only to the amount billed as the sales price of the materials or to the total amount of the sales price of the materials and the separately billed amount for the overtime payment to the T--- employees:

“Due to the inability of a purchaser of T--- to use rock, sand, gravel, concrete, mixed concrete or asphalt or other materials at the original time of delivery as, for example, due to a breakdown of the purchaser’s equipment, the purchaser requests a later delivery time. To comply with the purchaser’s request, T--- is required to keep employees at its plant after the usual working hours and to make overtime payments to the employees. By agreement with the purchaser the amount of the overtime payment is billed to the purchaser, the amount being shown separately from the sales price of the materials sold to the purchaser.”

The tax applies to the total amount of the sales price of the materials and the separately billed amount for the overtime payments. We believe that this conclusion is compelled by § 6012 of the Sales and Use Tax Law, defining “gross receipts” by which the tax is measured as:

“...the total amount of the sale or lease or rental price...without any deduction on account of....”

“The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.” (Underscoring added.)

Mr. F--- S. W---

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And providing that the total amount of the sale or lease or rental price includes “any services that are a part of the sale.”

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb

cc: --- District Administrator