



STATE BOARD OF EQUALIZATION

September 6, 1966

---, ---, --- & ---
XXXX --- Boulevard
--- ---, CA XXXXX

Attention: Mr. N--- R. B---

SR -- XX XXXXXX
N--- T--- & D---
Company

Gentlemen:

Your letter of August 11, 1966, regarding the determination of sales tax against N--- T--- & D--- Company, dated June 3, 1966, has been referred to this office for reply.

It is our understanding that the determination includes the selling price of tooling which W--- K--- purchased from N--- under an agreement pursuant to which W--- K--- may be required to reimburse N--- for sales taxes incurred with respect thereto.

W--- K--- purchased tools and dies from N--- to be used at W--- K---'s Tennessee manufacturing plant. The tooling was delivered by N--- in Los Angeles to W--- K--- for transportation by W--- K--- in its own trucks to its manufacturing plant in ---, Tennessee. The purchase order stated:

“All items are F.O.B. ---, Tennessee. Carriage will be arranged by W--- K--- as an accommodation with our trucks (or as may be required to meet production schedules) without charge to vendor.

“Final acceptance of tooling is subject to satisfactory mounting in our equipment and a production run at our --- Facility.

“Title to pass in Tennessee after final acceptance. Any payments made prior to final acceptance shall be considered a progress payment only and not as an indication of final acceptance.”

It is the position of W--- K--- that, since the parties agreed that title to the goods was to pass to W--- K--- in Tennessee after acceptance there, the sales occurred in Tennessee and were not taxable sales in this state. Our audit staff has concluded, however, that the sales are retail sales in this state and taxable under ruling 55 A(2)(b).

Paragraph A(2)(b) provides that sales tax applies to the sale of property which is sold and delivered to the purchaser or his representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property outside this state, and whether the property is actually so transported. We interpret the foregoing to mean that, where goods are sold by a retailer in this state, the sales tax is applicable if such goods are delivered to the purchaser or his representative in this state. We do not believe that the agreement of the parties, that title is to pass subsequent to in-state delivery to the purchaser, precludes the application of tax under this paragraph.

In our opinion, the agreement that title was to pass subsequent to in-state delivery at a point outside this state was limited in effect to a reservation by the seller of a security interest in the goods sold and did not have the effect of rendering the transaction a sale in Tennessee. This interpretation is supported by § 2401, subd. (1), of the California Commercial code, which provides:

“Any retention or reservation by the seller of title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest.”

In view of the foregoing, it is our opinion that the sales in question occurred in this state and were subject to sales tax. Accordingly, we are recommending to the board that the tax relative to such sales by N--- Company be redetermined without change.

Very truly yours,

George A. Trigueros
Associate Tax Counsel

GAT:em

cc: --- --- District – District Administrator
--- – Subdistrict Administrator