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**STATE BOARD OF EQUALIZATION**

August 6, 1953

T--- I---  
XXX-XXX --- --- Avenue  
--- X, California

Your letter of June 2  
Account No. -- XXXXX

Gentlemen:

In the recent sales tax audit a question arose concerning the application of sales tax to a sale of molds to E---, Inc. E--- issued its purchase order to you on August 9, 1951, for a number of molds to be used in the production of parts for its new "thin" model pen. It was expressly understood that E--- was to acquire title to the molds upon the completion of their manufacture but you were to retain possession of the molds for use in producing the parts for the pen. The molds were completed and invoiced to E--- in December of 1951 and January and February of 1952. Apparently the contract for the production of the parts was cancelled and no parts were ever produced. On February 13, 1953, E--- invoked its ownership rights pursuant to the contract for the production of the molds and you shipped the molds by highway carrier to E--- in Chicago.

As you know, under the provisions of Section A-1-(c) of Ruling 55, certain sales by California retailers to out-of-state consumers are constitutionally exempt from the sales tax. That ruling reads "Sales tax does not apply to sales of property which is shipped to a point outside this State, pursuant to the contract of sale, by delivery by the retailer to such point by means of delivery by the retailer to a carrier for shipment to a consignee at such point." One of the requirements for the exemption is that the out-of-state shipment be pursuant to the contract of sale.

The original purchase order stated that the goods were to be shipped to E--- in Chicago f.o.b. Pasadena but it is our opinion that this is not controlling. The agreement of the parties was that the molds were to remain in your possession for use in California and were only to be shipped to Chicago when and if ordered by E---. Accordingly, we believe that there is no basis for holding that the sale in question was constitutionally exempt from the California sales tax.

Very truly yours,

Bill Holden  
Junior Counsel

BH:ja  
cc: E---, Inc.  
Pasadena - Auditing