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**STATE BOARD OF EQUALIZATION**

November 19, 1951

Gentlemen:

This is in reply to your letter of October 15 concerning the application of the California retail sales tax with respect to charges for prints made by you from a customer's negative film in your possession, which prints are delivered by you to the customer at your plant.

You state that subsequently from within a few days to as long as two or three weeks later the customer returns the print to you and requests you to ship it out of state for his account and credit him for the sales tax which you charged when the customer originally picked up the print at your plant. Under these circumstances it is our opinion that there has been a completed sale of the print in this state to your customer and that the fact that he subsequently returns the print to you, requesting you to ship it outside the state, does not prevent the sales tax from applying. It is only when the seller in fulfillment of the sales agreement delivers the goods to the purchaser at a point outside this state or to a carrier for shipment to the purchaser at a point outside this state that the tax is rendered inapplicable on the basis that the sale is one in interstate commerce. The delivery to the out-of-state point or to the carrier consigned to the out-of-state point must be the act that completes the sale transaction and not an act that occurs subsequent to the completion of the sale.

You also inquire concerning the application of the sales tax with respect to sales by you of metal film cans to --- Company. Apparently these cans were originally considered to be nonreturnable containers to which you acquired title when purchasing raw film contained therein. Thus, when you sell these cans back to --- Company with delivery being made to the company's representative in this state, the application of the tax depends upon the use that will be made of the cans by --- Company. Presumably it is that company's intention to use them in the future as returnable containers.

We are enclosing a copy of Sales and Use Tax Ruling 49, Containers, and suggest that you give consideration to the three conditions set forth therein under which the tax does not apply to sales of containers. If you wish us to give you an opinion in the specific instance, please advise us the use that will be made of the containers purchased from you. The tax will not apply, of course, if they constitute nonreturnable containers when sold by

you. If they constitute returnable containers by virtue of their subsequent use, it would appear that the tax would be applicable as a sale of returnable containers to the user thereof.

Very truly yours

E. H. Stetson  
Tax Counsel

EHS:ph  
cc: Mr.