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**STATE BOARD OF EQUALIZATION**

April 3, 1953

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Attorneys at Law  
P. O. Box XXX  
---, California

Attention: Mr. H--- W---

X-XXXXX  
C--- L--- T--- S---, Inc.

Gentlemen:

Following our recent discussion and receipt of your letter of March 26, we have given further consideration to the application of the tax to the sale of the line operating equipment of C--- L--- T--- S---, Inc., to T--- E--- Company.

It is our opinion that this sale is not an exempt occasional sale under Sections 6006.5 and 6367 of the Sales and Use Tax Law. To be an occasional sale under Section 6006.5 a sale must be of property not held or used in the course of an activity for which a seller's permit is required. We, of course, concede that the property in question was not used in such an activity inasmuch as it was used in a transportation business, which does not in itself require a seller's permit. The section further provides, however, that the sale must not be one of a series of sales sufficient in number, scope and character to require the holding of a seller's permit. According to your letter of March 5 to our San Jose Office there were prior sales preceding the third quarter of 1952, and that there would be, within the twelve-month period immediately preceding the sale in question, a series of sales definitely sufficient in themselves to require the holding of a seller's permit and to constitute the company making them a seller as defined in the statute.

We are unable to find any legal basis to regard the sale in question, although the last sale contemplated, as not one of a "series of sales". We are, therefore, constrained to inform you that, if the sale in question occurs prior to July 1, 1953, we will be forced to regard it as a taxable sale. If it occurs thereafter, it will, as we understand it, be the only sale in any twelve-month period made by the company and could be regarded as an exempt occasional sale.

Our position in this matter is consistent with that which has been taken in a considerable number of more or less similar cases. There is now pending in the Superior Court of San Francisco an action of Sutter Packing Company v. State Board of Equalization, No 400260, respecting the question of the application of the tax to a single sale of cannery equipment made by a cannery after the close of its normal business operations where the cannery had made taxable sales within the twelve-month period preceding the sale in question, although several months had elapsed between the last of these sales and the sale in question. We anticipate that this case will be submitted to the Court on a stipulation of facts. In the event of a final judicial determination that the tax does not apply, it might well be that the decision would indicate the nonapplicability of the tax with respect to the sale by C--- L--- T--- S---, Inc.

It is suggested, accordingly, that you might wish to advise your client to pay the tax and file a refund claim. This refund claim could be held in abeyance pending the outcome of the Sutter Packing Company case.

Very truly yours,

E. H. Stetson  
Tax Counsel

EHS:ph

cc: --- --- -- Tax Administrator