



STATE BOARD OF EQUALIZATION

March 16, 1959

Mr. B--- A. L---
Attorney at Law
G---, D--- & G---
XXX --- --- Street
--- --- XX, California

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Dear Mr. L---:

I apologize for being so tardy in replying to your letter of February 3. I have, however, asked our San Francisco office for a report of its activity in connection with the questions presented.

From the facts set forth in your letter, I am inclined to agree with your views except as to the transfer of the assets in Los Angeles by M--- & M--- - C--- & Co. If, as we understand from your letter, this firm was engaged in retailing at each location, the sale of the assets at one location only would not, in our opinion, qualify as a sale of "all or substantially all of the property held or used in such an activity" (activity requiring holding of seller's permit), unless the assets actually sold were 80% or more of the total assets used in the activity at both places.

We think that the "activity" is the activity of selling, and not that portion of a selling activity carried on at different locations, even though because of the provisions of Section 6068 of the Sales and Use Tax Law a permit is issued for each place of business. We believe that this is a requirement to facilitate administration and does not purport to affect the occasional sale exemption by enlarging it at the particular place for which a permit is issued, even though such sale might be but a small part of the seller's total assets used in the business of selling.

This view is not inconsistent with the April 18, 1958 ruling mentioned in your letter. This related to a sale by a retailer of property held in a non-selling activity. The sale would be exempt under Section 6006(a) if the non-selling activity were an entirely separate and distinct business. Otherwise, the sale would be taxable. The question, however, concerns exemption under (b), not (a), of Section 6006.5.

Mr. B--- A. L---

-2-

March 16, 1959
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We will again consider the matter when we review the audit report.

Very truly yours,

E. H. Stetson
Tax Counsel

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cc: San Francisco - Auditing