STATE OF CALIFORNIA 435.1400

STATE BOARD OF EQUALIZATION

May 16, 1952

X----------------------

Account No. X-----------

Dear Mr. X---------------:

Since the hearing in Los Angeles on May 5, 1952, we have carefully reviewed the arguments presented on behalf of the taxpayer, including the information and statements in your letter of May 13, 1952.

Inasmuch as the tangible personal property transferred to X----------------------. Under the agreement of March 12, 1949, was in exchange for other tangible personal property and not in complete or partial cancelation of shares of stock, we are unable to concede that the transaction was in the nature of a distribution in liquidation of X----------------------. We are also unable to concur with the Petitioner's contention that the transaction constituted an occasional sale within the meaning of Section 6006.5 of the Revenue and Taxation Code, for the reason that the Petitioner has not established that the exchanged equipment was not held or used in the activity for which a seller's permit was required, and was not one of a series of sales; or that the ultimate ownership of the property remained substantially similar following its transfer, as required by Section 6006.5(b). With respect to the letter point, it is our position that the ownership of 50% of the shares of the transferee corporation by individuals not previously having any interested in the transferred property took the transaction out of Section 6006.5(b), as the ultimate ownership of the property did not, under such circumstances, remain substantially similar following the transfer.

With respect to new pipe furnished to the Petitioner by consumers, we are of the opinion that roto blasting is an integral part of the wrapping and coating process, constituting a step in the fabrication and production of the wrapped pipe rather than a repair operation. We have also ascertained that, in similar types of activities, i.e., the fabrication of tangible personal property furnished by consumers, this Board has considered charges by the fabricator for unloading the property as a part of the fabrication charges and, accordingly, includible in the measure of the tax.

In view of the foregoing conclusions, we propose to recommend that our determination of November 2, 1950, be increased, upon redetermination, in the aggregate

amount of unloading charges; and that our determination of April 4, 1952, be redetermined without adjustment.

Although you have not requested an oral hearing before this Board, we shall be pleased to arrange for such a hearing if you should now desire it. So that you may advise us of your wishes we shall withhold for another 30 days any action toward redetermination of the tax.

Very truly yours,

R. G. Hamlin,
Tax Counsel

RGH:ja