STATE BOARD OF EQUALIZATION

September 17, 1971

Mr. R--- R---
Tax Supervisor
C--- I---
XXX --- ---
--- ---, NY XXXXX

SR -- XX XXXXXX
M--- T--- Corp.
of California

Dear Mr. R---:

This is in reply to your petition for redetermination by letter dated August 15, 1971

The audit staff has determined that your company is liable on the full sales price of six machines, even though they were returned by the purchaser (U---) and the amount of the purchase price was recredited to U---.

You state that taxpayer (M--- T--- Corporation of California, hereinafter M---) is not a manufacturer of machines but acts as a middleman to locate machines, new or used, in which prospective customers may be interested. Taxpayer located the six subject machines in Oklahoma City and U--- was so advised. Representatives of U--- and taxpayer journeyed to Oklahoma City to see the machines. Taxpayer then purchased the machines and resold them to U--- with the understanding that they could be returned if U--- decided it did not want them. The machines were returned by U--- and U--- was credited for the return, less freight and handling and the cost of the trip to Oklahoma City.

It is this last charge which is the bone of contention between us.

Our audit staff cites Regulation 1655(a) in support of its position. This regulation, stemming from Sections 6006 through 6012 of the Revenue and Taxation Code, states in paragraph (a):

> "The amount upon which the tax is computed does not include the amount for merchandise returned by customers if, (1) the full sale price, including that portion designated as "sales tax" is refunded either in cash or credit….Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer…." [Emphasis added.]

The first sentence requires the full amount of the price to be refunded, less only the charges for rehandling or restocking. This was not done, therefore the full sale price must be included in the measure of tax.

You also maintain that the fact that taxpayer's and U---'s representatives only went to see one machine while six machines were sold, should make a difference to the effect that the $357 travel charge shall apply to only one of the machines, and not to all. I disagree. I think that what the parties agreed to, and what resulted, was one integrated sale of all the machines, which cannot be split up after the fact in this fashion.

You further argue that the sale "could also be viewed as two sales for resale which under applicable law would not incur any sales tax liability". I do not agree. The original sale was not a sale for resale but a final retail sale even though subject to the final return proviso. The return was not a sale for resale either, because it was not a sale but just that – a return for credit.

In view of the above, it is my recommendation that the determination be redetermined without any adjustment. Your letter requests an informal meeting with a hearing officer in our New York City district office. Unfortunately, the state has made no funds available to enable the legal staff to conduct hearings outside California. Hearings are only held at the board's offices in California.

If, after reviewing my recommendation and the reasons therefore, you still wish a hearing, please notify Mr. J. L. Martin, Supervising Tax Auditor, Board of Equalization, P.O. Box 1799, Sacramento, California 95808, within twenty days of the date of this letter. Otherwise, our recommendation will be presented to the board for final action of which you will be notified.

Very truly yours,

Philip A. Larrabee
Legal Counsel

PAL/vs