



---

**STATE BOARD OF EQUALIZATION**

June 9, 1954  
(CTS date 1-9-54)

[X]

Attention: [X]  
Excise Tax Counsel

Gentlemen:

We have considered the information set forth in your letter of March 26, 1954, with respect to returned merchandise included in our audit as being subject to tax on the ground that the merchandise was returned more than 90 days after sale and prior to September 9, 1953.

It is our understanding that [CS] delivers agricultural sprays to its customers in sufficient quantities to do a particular job. The customer usually orders a larger amount than is needed. When he has completed the work, the agricultural sprays not used are returned for credit. If returned during the regular season or "current use period", he receives full credit less freight charges. If not returned during that period, there is a 10% discount on the credit.

You state, "The Company intends to sell and the customer agrees to buy only the amount of spray needed for a job." A few large consumers are not invoiced until the actual quantity is determined. The average customer, however, is invoiced for the amount originally delivered and credited with any returned at a later date. Frequently the customer cannot use the spray immediately upon receipt because of weather conditions or arrangements for irrigation and packing of agricultural crops. In many instances, the spraying job will not be completed until after 90 days from the time the sprays are actually delivered to the customer.

It is our understanding that you contend that the returned sprays should not be treated as returned property within Section 6011 or 6012 because there was no intention to sell on [CS]'s part and no intention to buy on the customer's part any amount in excess of the sprays actually used.

From the information we have, it appears to us that the transactions outlined above were sales and title was transferred to the customer at least upon delivery of the products. We think that there is no intention manifested that the products should remain the property of [CS] until the amount actually used on the job is determined for we think [CS] definitely would not consider risk of loss or destruction of property was on it during that period.

We think also that title to the property passed in accordance with the presumptions set out in Civil Code Section 1739, Rule 3(1). The transactions appear clearly to be sales "on sale or return" and, accordingly, title passes upon delivery to the buyer subject to a condition subsequent whereby the buyer may revert title to the unused portion of the sprays by returning them to [CS]. Accordingly, where more than 90 days passed prior to the return of the sprays, the total sale price is includible in gross receipts of [CS] under Section 6012 as that section read prior to September 9, 1953.

Where the sprays are returned after the "current use period", it appears that the full sale price is not refunded to the purchaser and, accordingly, the exclusion from gross receipts in section (b) of the third paragraph of section 6012 or 6011 does not apply since, in these transactions, the full sale price is not refunded to the customer. In any event, failure to refund or credit freight charges for delivery of the goods to the purchaser would be failure to refund or credit the "full sale price" which, if title passes upon delivery, is inclusive of delivery charges.

For the above reasons, we cannot advise the Board that the item in question should be eliminated from the proposed determination. We are, therefore, directing our auditing staff to issue a notice of determination after which, if you desire, you may petition the Board for redetermination and request an oral hearing.

Yours very truly,

John H. Murray  
Associate Tax Counsel

JHM: ja

cc: [City] - Auditing