STATE BOARD OF EQUALIZATION

OFFICE CORRESPONDENCE

Place: Sacramento, California

Date: October 21, 1954

To: REDACTED TEXT

From: W. W. Mangels

Re: REDACTED TEXT

We understand that, with respect to the large mechanized floats, there is never transfer of possession to the customer.

This is based on our following understanding of the facts. The contract provides that the REDACTED TEXT will not only build the float, but will also enter, display, and operate the float in the parade. The driver and vehicle are furnished by the float builder. We further understand that the parties act in a manner consistent with the language of the contract. Therefore, if our understanding of the facts is correct, it is clear that the REDACTED TEXT Company is a consumer of the material going into the large mechanized floats.

With respect to the smaller, non-self-propelled floats, taxpayer does not furnish the driver. These floats are delivered to the parade side and pulled in the parade by the customer's towing vehicle after which they are returned to taxpayer at the parade terminus. The vehicle upon which the float is mounted is registered and insured in taxpayer's name. Unlike the larger floats, taxpayer merely fabricates and delivers these floats, not operating them in the parade.

Therefore, unlike the larger floats, there is a transfer of possession of the smaller floats. The question then is, is there substantial consumption of the smaller rental floats so as to render them, in effect, sold rather than rented?

This is a difficult question to answer and the answer depends upon unknown facts. To illustrate, let us assume a particular small float, including the vehicle upon which it is mounted, is "rented" for a $250.00 lump sum.

First of all, in view of the lump-sum billing, it is our opinion that there is, in effect, merely the transfer of possession of one object—float and vehicle—and a determination must be made whether that single object is substantially consumed or is not substantially consumed. In other words, either the whole object is sold (by way of substantial consumption) or is not sold. We do not believe it is proper to say that particular portions of the float may be sold and other portions not sold when applying the substantial consumption test.

In determining whether the single object is substantially consumed, we should take into account the rental value of the vehicle. Let us say in our example that this is $25.00. Since the vehicle has not been substantially consumed, this would mean, in effect, that one-tenth of what the customer is paying for is not substantially consumed ($25.00 over $250.00).

Let us now also assume that the wood or metal frames involved will be reused after this customer is through with them in a substantially similar form by subsequent customers and that their value is about $50.00. Thus, an additional 20% of what the customer receives is not substantially consumed. Let us assume that the balance of the components, foil, plywood, and other items, as fabricated, is worth $175.00 and is substantially consumed. This would mean that there has only been 70% consumption which, in this instance, would not be regarded as a sale.

It seems to us that there would have to be a minimum of 80% consumption to have a sale. If there is a sale of any of the smaller floats, the entire charge for these floats would be taxable. In other words, labor of placing the float on the vehicle constitutes fabrication labor to furnish the complete object—float and vehicle—needed by the customer, and not installation labor.

WWM:ja