



STATE BOARD OF EQUALIZATION

February 21, 1956

[X]

Dear Mr. [X]:

This is in answer to your letter of January 11 addressed to Mr. Harry L. Say, Sales Tax Administrator. You enumerate seven transactions involving the sale of tangible personal property and request our opinion as to the Bank's liability for collection of the use tax in each transaction. For clarity we shall repeat these transactions followed by our comments:

1. The borrower sells his equity in property, which has been mortgaged or pledged to the Bank as security for a loan, to a third party who assumes the unpaid balance of the obligation to the Bank.
2. The borrower sells the mortgaged or pledged property to a third party subject to the mortgage or pledge and the Bank releases its claim under the mortgage or pledge upon receipt of payment of the obligation to it.
3. Same as 2 except that the Bank finds the purchaser and the sale from the borrower to the purchaser is handled by a Bank officer.
4. The borrower delivers the mortgaged property to the Bank and consents to its sale. The Bank then sells the property to a third party, applies the proceeds to the debt and delivers the balance, if any, to the borrower.
5. The Bank holds a pledgee sale, after legal notice, and sells the pledged property to a third party at such sale. The proceeds are applied to the debt and the balance, if any, is delivered to the borrower.
6. The mortgaged property is sold to a third party at a sale conducted by a Court officer in a foreclosure proceeding and the proceeds are delivered to the Bank in payment of the debt.
7. The borrower delivers property to the Bank upon which the Bank has no lien and requests the Bank to sell the property for him and apply the proceeds on the debt. The Bank then sells the property to a third party, as agent for the borrower who is the owner of the property and applies the proceeds on the debt.

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In our opinion the Bank is liable for the collection of the use tax from customers in transactions numbered 4, 5 and 7. In each of these transactions the Bank appears to be the seller. In transaction number 6 the sale is by a court officer and in cases 1, 2 and 3, the original owner (borrower) is the seller. He is liable for the tax if he qualifies as a seller or retailer under the terms of the Sales and Use Tax Law. Although in case number 3 the Bank finds the purchaser it appears that the borrower actually makes the sale in the sense that he has, and exercises, the power by his own act to transfer beneficial title to the purchaser.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ds

cc: San Francisco -Compliance