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**STATE BOARD OF EQUALIZATION**

December 2, 1969

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XXXX --- --- Boulevard  
--- ---, CA XXXXX

Attention: Mr. R. E. K---  
President

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This is in response to your petition for redetermination on a claim for refund of taxes paid as the result of a determination issued on the basis of an audit covering the period April 1, 1967, to April 30, 1969.

Your petition protests the inclusion of the audited amounts upon which tax was determined to be due, of the following:

1. The cost of cars loaned to parochial schools for driver education.
2. The sales price of hoists included in the selling price of equipment involved in the sale of the business assets to a successor.

We will discuss the items in the above order.

Section 6404 of the Revenue and Taxation Code provides in pertinent part that,

“The loan by any retailer of any tangible personal property to any school district for an educational program conducted by the district is exempt from the use tax....”

As provided by the above section, the exemption extends only to a “school district.”

It is your contention that the cars loaned to parochial schools are loaned to a “school district.” In support of this contention you submit a letter from the --- of Los Angeles, D--- W. M---, superintendent of schools, high schools and colleges which presents the ---’s reasons why he believes the --- School System constitutes a school district.

We cannot agree that a private or parochial school system constitutes a school district within the meaning of section 6404 of the Revenue and Taxation Code.

While it is true that private schools are subject to regulations of the Education Code which also governs the formation and activities of public schools and school districts, it does not follow that private or parochial school systems are school districts.

A "school district" is a public corporation organized, existing and controlled under the Education Code pursuant to authority granted by article 9, section 14, of the California Constitution which permits the Legislature to provide for the incorporation of "school districts."

The Education Code distinguishes between private and public schools with part 4, division 21, chapters 1 through 5 interpreting the duties and responsibilities of private and parochial schools. In addition, the courts have defined a school district in the following language, "...a school district is an involuntary political division of the state, created by or under authority of general laws." Butler v. Compton Junior College District, 77 Cal. App. 2d 717. "A school district is a 'political subdivision of the state' but as such is an independent governmental agency." Gould v. Richmond School District, 58 Cal.App.2d 497. "School districts are agencies of the state for the local operation of the state school system." Yreka Union High School District v. Siskiyou Union High School District, 227 Cal.App.2d 666.

Since private or parochial school systems are not public corporations, political subdivisions of the state nor agencies of the state, they do not meet the requirements of the above definitions of a school district. Accordingly, they do not constitute a "school district" within the meaning of the Sales and Use Tax Law and the exemption provided by section 6404 is not applicable when cars are loaned to private or parochial schools.

2. You contend that the floor hoists in question are exempt from the tax because they are not movable and were installed with the idea of never being moved.

We understand that the hoists were installed by you as lessee of the real property and according to the audit comments the lease agreement between you and the lessor of the real property provided that such hoists remained your property for which you retained the right of removal.

Under the above circumstances the sale of such property has consistently been regarded by the board as the sale of tangible personal property to which the sales tax would apply. It is irrelevant that the hoist were installed "with the idea of never being moved." There was no apparent intent that the hoists become part of the real property owned by the lessor. They were installed by you for a "trade purpose" and by agreement remained your property for which you retained a right of removal. The fact that the hoists were sold in place to a succeeding tenant, making severance of the hoists in question unnecessary, does not lead to the conclusion that the character of the hoists was changed from personalty to realty.

The board's position that such transactions are subject to the tax finds support in the case of Standard Oil Company v. State Board of Equalization, 232 Cal.App.2d 91, wherein the court held that an express agreement providing that affixed property was to retain its character as tangible personal property was controlling for sales tax purposes. Accordingly, the hoists involved in the

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protested item remain tangible personal property, even though affixed to the leased real property, and the tax applies to the sale of such hoists to the succeeding tenant.

In view of the above, we will recommend that your claim for refund be denied. If after giving consideration to our recommendation and the reasons therefore, you still desire a hearing on your petition, notify us within 15 days from the date of this letter. Otherwise, we will submit the matter to the board for final action in due course.

Very truly yours,

T. P. Putnam  
Tax Counsel

BY \_\_\_\_\_  
Joseph Manarolla

JM:smb