



STATE BOARD OF EQUALIZATION

April 27, 1965

Gentlemen:

We have completed our review of the above-named taxpayer's petition for redetermination of sales and use tax. A preliminary hearing was held on this matter in Inglewood on December 14, 1964.

We have concluded that the field staff properly classified the favor merchandise, brochures and catalogues, and other promotional material into sale and self-consumption categories. Where more than 50 percent of the total cost of property is contributed in furtherance of a business promotion for the mutual benefit of both parties, we regard it as a clear indication that the transfer is made to carry out the promotional activity and not as a bargained-for exchange of property for a consideration. While the basis used by the field auditor is not embodied in any formal ruling, it is an administrative interpretation of which your client had prior actual knowledge. Accordingly, we have recommended no change in the method used to compute the measure of tax for the favor merchandise and the brochures and catalogues.

We have directed that further audit investigation be conducted to verify that the measure of tax for the favor merchandise includes approximately \$14,324 in cost attributable to merchandise classified as sold by the field auditor. Upon obtaining proper verification, a reaudit adjustment will be made deleting any such amount from the measure of tax.

No adjustment is to be made for the charges identified on the worksheet supplied at the preliminary hearing as "freight on packaging materials." Under the provisions of Revenue and Taxation Code Section 6012 and Sales and Use Tax Ruling 58, freight charges are exempt from tax only if they represent "separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser." We understand that the charges were incurred by the vendor, "Y", prior to packaging and sale of the product to petitioner.

We are unable to agree that the 10 percent negligence penalty should be deleted. Since your client did not pursue its protest of the prior determination beyond the administrative level, its subsequent failure to report in the prescribed manner cannot be excused on the basis that the failure to report was the result of an honest dispute as to the application of the tax (see Independent Iron Works, Inc. v. State Board of Equalization, 167 Cal. App. 2d 318). Likewise, a change in corporate management does not provide a valid basis for relief from the penalty. New management employees are charged with the notice given to their corporate employer.

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A representative of the field audit staff will contact your client in the near future to conduct the additional audit investigation indicated above. In the interim period, any questions regarding our conclusions and the further action to be taken should be directed to this office.

Very truly yours,

W. E. Burkett
Associate Tax Counsel

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**STATE BOARD OF EQUALIZATION**

April 30, 1965

Gentlemen:

We have completed our review of the above-named taxpayer's petition for redetermination of sales and use taxes. A preliminary hearing was held on this matter in Long Beach on April 15, 1965.

We have concluded that the field staff properly classified the catalogs and brochures into sale and self-consumed categories. While the basis used is not embodied in any formal rule, it is our opinion that it is an authorized interpretation of what constitutes a substantial sales price in the attendant circumstances. The term "substantial" means substantial in relation to the cost of the property. It is defined in Webster's Third New International Dictionary (Unabridged) as "being that specified to a large degree or in the main." Where more than 50 percent of the total cost of the property is contributed in furtherance of a business promotion for the mutual benefit of both parties, there is a clear indication that the transfer is made to carry out the promotional activity and not as a bona fide bargained for exchange of property for a consideration.

In reviewing your petition letter, we note there is one group of merchandise of a measure of tax of \$X,000 contended to have been sold for an amount in excess of 50 percent of the actual cost of the property. Upon verifying that the sales price of this merchandise was more than 50 percent of cost, an adjustment will be made deleting the cost included for this item from the measure of tax.

A representative of the field audit staff will contact your client in the near future regarding this possible adjustment.

With the exception of the possible adjustment noted above, we shall recommend that your client's petition be denied.

Very truly yours,

W. E. Burkett
Associate Tax Counsel

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