M e m o r a n d u m

570.1300

Sacramento, California
April 1, 1954

To: Mr. Vernon Ekstrom

From: W. W. Mangels

Subject: J--- H---, Inc.
XX --- Place
--- --- X, New York Account No. XXXXXX

S--- - R--- D--- B---, Inc.
Pier XX B-139943
--- ---, California Account No. - XXXXX

The legal staff finds the following facts with respect to J--- H--- Inc.'s petition for redetermination.

The barge was sold in this State to S--- - R--- D--- B---, Inc. It was purchased by that customer with the intent of use in its business but no resale certificate was given, nor sales tax reimbursement paid. Over an extended period of time efforts were made by another company, S--- - R--- Co to repair the barge for S--- - R--- D--- B---, Inc., to make it suitable for use but such efforts failed, particularly in view of the fact that the boiler was condemned by the State Department of Industrial Relations. In view of such failure, H---s' customer never put the barge into actual service but sold it to S--- - R--- Company.

Conclusion

There was no intervening taxable use and therefore the sale by H--- was an exempt sale for resale.

Rule of Decision

If a person purchases tangible personal property intending to use it and attempts to repair the property to make it suitable for use but the reconditioning effort fails and the item is sold in the regular course of business by that purchaser without being actually put into service, we will not regard the efforts to repair as a taxable intervening use.

WWM:ja

cc: San Francisco - Auditing