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**STATE BOARD OF EQUALIZATION**

September 17, 1964

Attention: \_\_\_\_\_  
Office Manager

Gentlemen:

We have reviewed your petition for redetermination of sales and use tax in the light of information obtained at the preliminary hearing on this matter in San Francisco. It is our opinion that no legal basis exists for adjustment.

Section 6009 of the Revenue and Taxation Code provides as follows:

“Use’ includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.”

The transfer of the cable material to the United States Navy was made to replace property damaged by your firm. The transfer was made without any element of bargain or new consideration such as to warrant a finding of a sale. Accordingly, we have concluded that there was no sale of the property in the regular course of business. It follows that your firm’s purchase of the property and its exercise of right and power over the property for purposes of replacing the damaged property constitutes a taxable use under the provisions of the above quoted section. While the United States Navy ultimately acquired the beneficial title to the property, this provides no basis for exempting the purchase from use tax.

Very truly yours,

W. E. Burkett  
Associate Tax Counsel

WEB:md  
cc: San Francisco – District Administrator