STATE BOARD OF EQUALIZATION

February 10, 1953

Gentlemen:

Account No.

We have reviewed your petition for redetermination and your supplemental petition and are prepared to make the following recommendations for adjustment:

1. Sales of trunks to The Taxes Company.

Quarter Ending	Protested Items	Truck Number
12/31/49	6858.24	371998
12/31/50	6966.17	381923
12/31/50	7002.06	382245

It is our understanding that each of the above trucks were sold by your New York office and shipment was made f.o.b. factory, Cleveland, Ohio, to Butler Manufacturing Co., Richmond, California, for the installation of tanks. After the tanks were installed on the chassis, Butler shipped these trucks to The Taxas Company, the first two to Seattle, Washington, and the last to Phoenix, Arizona.

This would indicate that the sales to The Texas Company are exempt from sales tax as interstate sales and since the installation the tanks was not a taxable use in this State, the use tax would not apply. For this reason we will recommend that these items be deleted from the measure of tax as set forth in the determination.

2. Sales to International Engineering Co., Inc., aggregating $16,406.04.

It is our understanding that the purchase orders for these items were sent to your San Francisco office and the merchandise covered by these purchase orders was delivered to export packers in California. The purchase orders contained a "Bailee Clause" to the effect that the merchandise was to be delivered to named export packers for packaging for overseas shipment and "it is further understood and agreed that delivery of the commodities to the export packers, as indicated, will constitute delivery to such export packers as Bailee for you."

It is our opinion that the delivery to the export packers constituted a delivery to the purchaser. This is based on the fact that the export packers were in fact acting for the purchaser and were paid by the purchaser for their services. Under similar circumstances, the policy of the Board has been to treat such transactions as taxable sales. There is now pending an action involving the taxability of this same type of transaction and until there is a final court decision holding such transactions nontaxable, it is our policy to regard them as taxable. For this reason our recommendation is that these transactions be considered as taxable.

*Note: See exemption in Section 6387 eff. 9/7/55 DJH

Your petition for redetermination indicates that you desire an informal hearing before a-hearing officer. If you still desire such a hearing or a hearing before the Board, we will set the matter for hearing at your request.

Yours very truly,

E. H. Stetson
Tax Counsel

JHM: j a
cc: San Francisco - Auditing