

Indefinite

PLEASE RETURN TO
LEGAL FILES

October 30, 1962

Dear Mr. [REDACTED]

This is to inform you of the position I have taken with regard to the petition for redetermination of the above named taxpayer. I have concluded that tax was incorrectly set up on the sale and use of race horses purchased from the Riddle estate.

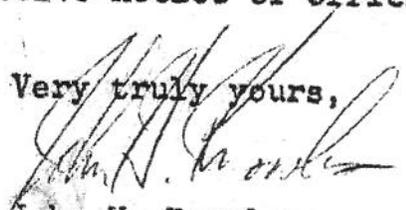
Since the [REDACTED] estate made annual sales by auction of its yearlings, it was thought it constituted a retailer. However, this interpretation is incorrect. Section 6015 of the California Sales and Use Tax Law (copy enclosed) defines retailer to include,

"Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption."

Thus, the auctioneer, not the [REDACTED] estate, was the retailer of the horses in the preceding years. When the [REDACTED] estate sold the horses to the petitioner, it had not made other sales sufficient in number, scope or character to classify it as a retailer so as to make a purchase by a California user subject to use tax.

We, therefore, have recommended that the petition for redetermination be granted. You will receive notice of official board action in due course.

Very truly yours,


 John H. Knowles
 Assistant Counsel

 JHK:o'b
 Enc.

cc: San Bernardino - Auditing: Attached are two copies of the Report of Hearing Officer which has been approved. The hearing was held in San Bernardino on May 2, 1962.

