



STATE BOARD OF EQUALIZATION

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January 14, 1975

Mr. D--- O---
Attorney at Law
XXXXX --- Blvd., Suite XXX
--- ---, CA XXXXX

Dear Mr. O---:

RE: H--- & H--- W--- Products
SR – XX-XXXXXX

Reference is made to your petition for redetermination filed on behalf of the above-named taxpayer with your letter of July 18, 1974. The petition has two contentions. One, that the transaction whereby taxpayer sold its equipment to I--- G--- and J--- G--- was an occasional sale under Revenue and Taxation code Sections 6367 and 6006.5 and hence not subject to the sales tax. The other, that the sales price on which the tax was computed was too high.

Recommendation has been forwarded to the Board by the audit staff that a redetermination be made to adjust the sale price in accordance with the second contention. Principal Auditor, R. B. Petersen, so informed your client via letter dated September 13, 1974. We concur in that recommendation.

With regard to the first contention, however, we recommend that redetermination be made without adjustment as to it. It is our view that the transaction in question does not qualify as an occasional sale.

Taxpayer processed wood furnished by its customer, a related company, into vinyl laminated wood products which the customer sold. However, the processing required incorporating materials into the wood, such as wood fillers, adhesives, stains, inks, and sealers. Taxpayer purchased the materials ex tax at a cost representing 17 percent of its sales volume.

The sale of its equipment would have qualified as an occasional sale under Section 6006.5(a) if it was a sale of property not held or used by the seller-taxpayer in the course of activities for which it was required to hold a seller's permit. If the only activity of the subject taxpayer had been processing the wood for its customer, not a consumer, the taxpayer would not have required a seller's permit because that activity is not a sale. Under Section 6006(a), for a processing of materials furnished by a customer to be a sale, the customer must be a consumer. Business Taxes Law Guide Annotation 395.0340, 3/20/51. As analyzed in detail below, however, the additional activity of this taxpayer with regard to the components was one requiring the holding of a seller's permit, thus the sale of the equipment was not an exempt occasional sale.

Section 6066 requires every seller to hold a permit. Section 6014, defining "seller", has two requirements: engaging in the sale of tangible personal property; the property must be of a kind the retail sale of which would be taxable.

Here the first requirement was met. Section 6006(a) defines a sale as a transfer of title to tangible personal property for a consideration. Taxpayer transferred title to the components when he incorporated them into the wood and returned the wood to the customer. It must be assumed that part of the compensation for processing represented reimbursement for the cost of the components, thus there was consideration received for the transfer of title as to them, and a sale took place.

As to the second requirement, that the property sold must be of a kind the retail sale of which would be taxable, the equipment together with the components were used to produce property, i.e., vinyl laminated wood products, which were ultimately sold at retail. Thus, the second requirement of the definition of seller was met.

It is appreciated that to arrive at the above conclusions we have considered the components separately to satisfy the "sale" requirement, and the processed wood as a whole to satisfy the "kind of property" requirement in the definition of seller. However, the former were incorporated into the latter and we have found no precedent that the property sold must of and in itself be of a kind sold at retail when it is processed into property which is.

Glass-Tite Industries, Inc. v. State Board of Equalization, 266 Cal. App. 2d 691, would upon first consideration appear to suggest a contrary rule, namely, that the property sold must be of a kind in itself suitable for sale at retail. However, the *Glass-Tite* case gave that rule with regard to the product of a manufacturer, diode sub-assemblies, which were not suitable for sale at retail in the form produced, and had to be integrated into another product by the customers who were also

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manufacturers. Here, none of these special circumstances is present. The taxpayer was a processor of goods furnished by another and not a manufacturer as such. Furthermore, the goods as processed were suitable for retail sale. Lastly, the customer furnishing the wood to be processed was not a manufacturer incorporating the goods, in turn, into another product to be sold, but was simply a seller of the goods as processed.

Very truly yours,

Thomas L Hartigan
Tax Counsel

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bc: --- --- – District
--- – Auditing (RBP)
Petition Unit