



STATE BOARD OF EQUALIZATION

October 1, 1964

S--- P--- Company, Division of
S--- R--- Corporation
XXXXX N. XXth Avenue
---, ---

XX-XXXXXX
-- - XXXX

Attention: Mr. G. A. O---, Controller

Gentlemen:

Your petition for Redetermination has been referred to the legal staff for consideration.

As you have stated in your petition, the S--- P--- Company is in the business of manufacturing and selling flight control equipment to governmental and commercial customers. S--- P--- Company maintained an engineering laboratory in ---, California. The laboratory was closed and laboratory equipment was sold to dealers for resale and to consumers at retail. You have conceded the application of tax with respect to the sale of laboratory equipment to consumers.

It is our understanding that S--- P--- assigned its lease of the premises to U--- T--- Corporation and sold them four (4) hot water heaters, six (6) air conditioning units, and twelve (12) gas heaters, in place in the building. It is your contention that, although the S--- P--- Division has made a number of sales of used equipment, it does not normally sell the type of property in question and that the sale thereof to the U--- T--- Corporation was an occasional sale under § 6006.5 of the Revenue and Taxation Code and sales tax ruling 81.

Under § 6014 of the Revenue and Taxation Code, a seller is defined as including every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

Under § 6006.5 an occasional sale is defined as including a sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit, providing such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit.

As you have indicated in your petition, S--- P--- Company is in the business of manufacturing and selling flight control equipment to governmental and commercial customers and has made a number of sales of surplus equipment. It, therefore, appears that S--- P--- Company is a seller as defined in § 6014 and that the sales of laboratory equipment, including the hot water

heaters, air conditioning units, and gas heaters (property held and used in an activity requiring a seller's permit) were not occasional sales, as defined in § 6006.5.

It further appears to us, that even if the laboratory equipment were not regarded as held or used in connection with selling activities attributable to the P--- plant, nevertheless the sale of the water heaters, air conditioning units, and gas heaters was one of at least eight sales of used equipment by the --- engineering laboratory. Therefore, the sale to U--- T--- Corporation was one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit by the --- engineering laboratory.

In view of the foregoing, it is our opinion that the sale of the hot water heaters, air conditioning units, and gas heaters was a taxable retail sale. Accordingly, we must recommend to the board that your petition for redetermination of sales tax be denied.

Very truly yours,

George A. Trigueros
Associate Tax Counsel

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cc: --- – District Headquarters