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**STATE BOARD OF EQUALIZATION**

April 14, 1958

Mrs. O--- M. T---  
XXXX South --- Avenue  
---, California

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Dear Mrs. T---:

Your case involves a sale of both real and tangible personal property under an escrow agreement wherein title to the purchasers was not to pass until said purchasers made a payment of \$8,500 to be deposited into escrow.

At the time of the agreement, the purchasers paid you the sum of \$500 as a down-payment toward the purchase price and at the same time you and the purchasers entered into an oral rental agreement whereunder, in consideration of the sum of \$100.00 (apart from the agreed purchase price), you would transfer possession to the intended purchasers immediately.

However, the intended purchasers failed to complete the escrow agreement. As a result, the possession of the business was returned to you and you retained the \$500.00 deposit as damages.

The question is whether or not there was a sale by you of tangible personal property.

Where there is no transfer of title, a transfer of possession may, nevertheless, be a sale if it is of the type found by the Board to be in lieu of a transfer of title or if there is a transfer of possession with the seller retaining title only to secure payment of the purchase price.

However, in your case we feel that the transfer of possession to the intended purchasers should be regarded as a rental apart from the contract of sale and not a transfer of possession in lieu of a transfer of title.

Mrs. O--- M. T---  
Account -- - XXXXX

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April 14, 1958  
395.1160

Therefore, we shall recommend that your claim for refund in the amount of \$164.00  
be granted.

Very truly yours,

Warren W. Mangels  
Associate Tax Counsel

WWM:rc

cc: Mr. J--- F---  
XXX South --- Avenue  
---, California

cc: Pasadena – Mr. A--- B---