



STATE BOARD OF EQUALIZATION

September 10, 1965

Law Offices of
M---, C---, M--- and S---
XXXXX --- --- Avenue
---, CA XXXXX

SR --- XX XXXXXX
V--- C---

Attention: Mr. S---

Gentlemen:

Our San Diego office has requested that we communicate with you regarding your client's petition for redetermination of sales tax.

It is our understanding that your clients entered into an agreement to sell the business, fixtures, and liquor license of their restaurant, V--- C---, to J--- R. and R--- A. L---. The buyers placed \$XX,000 in escrow and took possession of the premises and the liquor license was transferred to them pursuant to an agreement that your clients obtain the consent of the mortgagee of the equipment.

The L--- operated the business for one month. Apparently, because of your clients' failure to obtain the consent of the mortgagee, the L--- ceased operations and abandoned the premises. The liquor license was deposited with the Department of Alcoholic Beverage Control for transfer back to your clients.

Under § 6006(e) of the Revenue and Taxation Code, a sale is defined as including a transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price. The board has taken the position that when intended purchasers deposit a part of the purchase price in escrow, agreed to pay the balance, and take possession of the premises and begin active conduct of the business, a sale, as defined in § 6006 has taken place.

In view of the foregoing, we must recommend denial of your clients' petition for redetermination of sales tax. Inasmuch as your clients have not requested a hearing before the board, this matter will be placed on the board's nonappearance calendar and your clients will receive formal notice of the board's final action in due course.

Very truly yours,

George A Trigueros
Associate Tax Counsel

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cc: Van Nuys – Subdistrict Administrator