

M e m o r a n d u m**395.1252**

To : Mr. Doug Carroll
Ventura Compliance Supervisor - AR

Date: April 22, 1993

From : Thomas Cooke
Tax Counsel

Subject: C--- K--- Y---, et al.
SR -- XX-XXXXXX

This office has received some materials concerning a sale of a restaurant known as --- --- Fast Food Restaurant. Buyer and seller signed a "memorandum of sale and purchase" for the restaurant on February 13, 1992. The purchase price of \$XX,000.00 was paid to the escrow officer on February 13, 1992. The buyer took possession of the business in March of 1992. The purchase price remains in escrow. The buyer has filed a complaint in superior court seeking reformation of the contract and rescission alleging that the equipment furnished was not suitable for use in the restaurant and requesting that the court reduce the purchase price to reflect the true valuation of the business.

The buyer and seller signed an executory contract for the sale of the business. The seller tendered the agreed purchase price into escrow. The buyer took possession of the business. It is our opinion that the sale of the business has occurred.

The buyer of the restaurant is unhappy with the equipment sold with the business. The buyer has filed suit to obtain relief.

In *Southern California Edison Co. v. State Board of Equalization* (1972) 7 Cal.3d 652, 102 Cal.Rptr. 766, the court held that sales and use taxes are properly computed on the agreed-upon selling price of tangible personal property and a subsequent "adjustment" of the sales price as part of a settlement of litigation does not entitle a taxpayer to a refund of any portion of the initially-computed sales or use tax.

It is the opinion of the Legal Division that the sale of the business has occurred and sales tax is properly assessed calculated on the original sales price of \$XX,000.00.

TC:wk

cc: Mr. R. A. Slater
Collections Section (MIC:55)

Mr. Gordon P. Adelman