

September 17, 1964

Indefinite *as of ()*

Attention: Mr.

Gentlemen:

This is to inform you of the position we have taken with respect to the above named taxpayer's petition for redetermination of sales tax. We regret that we must recommend to the board that the petition be denied.

The sale of fixed assets to the parent corporation is not an exempt occasional sale under either subparagraph (a) or subparagraph (b) of § 6006.5 of the California Sales and Use Tax Law. This section defines occasional sale for purposes of the sales and use taxes. The sale in question does not qualify under subparagraph (a) because the property was held by the petitioner in the course of an activity for which it was required to hold a seller's permit. As a contract driller, petitioner made various retail sales which it reported to the State Board of Equalization and on which sales tax was paid. The fact that these sales were made as an accommodation to the other contracting party, does not detract from petitioner's status as a seller required to hold a permit and report tax under the law.

The transfer does not qualify under subparagraph (b) of this section. In order to qualify, the transferor must transfer "all or substantially all" of his assets. However, petitioner sold only the property it did not need in Australia to the parent. The remainder it retained.

At the hearing you stated the auditors had included items sold to _____, a corporation related to _____. You stated that had been invoiced for these items through a bookkeeping error.

Our auditors inform us that these transactions were not included in the measure of tax. They were noted in the audit working papers as nontaxable out-of-state transactions and were not considered in setting up the tax determination.

status as a seller required to report all retail sales and pay sales tax in accordance therewith. 9/17/64.

September 17, 1964

You are entitled to a board hearing in this matter. If you disagree with our conclusions and desire such a hearing, please let us know within thirty days so we may make the necessary arrangements. If you do not desire a board hearing, please sign and return two of the enclosed Waiver of Board Hearing forms. The third copy is for your files.

Very truly yours,

John H. Knowles
Associate Tax Counsel

JHK:spg

Enc.

cc: Downey - Subdistrict Administrator

Attached are two copies of hearing officer's report dated 8-18-64, which has been approved. This hearing was held in Pasadena on 6-16-64.