

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

September 29, 1988

Mr. A. M--- J---  
J--- & L---  
P. O. Drawer XXXXX  
---, CA XXXXX

Dear Mr. J---:

This is in response to your letter dated September 7, 1988 regarding the requirements of the Sales and Use Tax Law with respect to repossessions and sales by a California banking institution. You ask:

- "1. Must the Bank hold a retail seller's permit in order to repossess personal property in which the Bank holds a perfected security interest?
- "2. If the Bank repossesses personal property for the sole purpose of resale to third persons, does the repossession constitute a taxable event?
- "3. "If, rather than repossessing the property, the Bank conducts an auction and credit-bids in and acquires the personal property, which it intends to thereafter resell, does the purchase from the auction constitute a taxable event?
- "4. "Must the Bank hold a retail seller's permit if it holds more than three auctions of personal property, during which auctions the Bank purchases the property for the purposes of resell?
- "5. "If the Bank resells personal property, acquired through repossession or auctions, under what circumstances must it hold a retail seller's permit?"

Initially we note that California Constitution Article XIII, Section 27 provides that the tax on state banks measured by their net income is in lieu of all other taxes except taxes upon real property and vehicle registration and license fees unless otherwise provided by the Legislature. The Legislature has so provided in Revenue and Taxation Code Section 23182, and beginning in 1980 state banks became liable for sales and use taxes. (See Reg. 1567.)

Repossession is the power granted by contract to the holder of a security interest in property to take possession of that property upon default and sell the property to satisfy the amount of its security interest. When a bank repossesses property and sells it pursuant to its power of sale, it is a seller because it is transferring title to the property in exchange for consideration pursuant to its contractual power to do so. (Rev. & Tax. Code §§ 6006, 6014, Business Taxes Law Guide Annotation 220.0080 (5/3/50, 9/16/87).) A person engaged in the business of selling tangible personal property is required to hold a seller's permit. (Rev. & Tax. Code § 6066, Reg. 1699.) A person is engaged in business as a seller of tangible personal property if that person makes three sales within any twelve month period. (Reg. 1595(a)(4).) If the bank makes at least three sales in any twelve month period, whether those sales are of its own property or pursuant to a contractual power to sell, the bank is required to hold a seller's permit.

If the bank is required to hold a seller's permit, the bank owes sales tax on its retail sales of tangible personal property measured by the gross receipts from those sales. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (Rev. & Tax. Code 6007.) The burden of proving that the sale of tangible personal property is not a sale at retail is upon the bank unless it takes from the purchaser in good faith a timely resale certificate. (Rev. & Tax. Code § 6091, Reg. 1668.) Thus, a sale by the bank is subject to sales tax unless it takes a timely resale certificate in good faith from the purchaser or establishes that the sale was not at retail.

Since the bank may not actually hold title to the property prior to the sale, it can also be the purchaser of the property when credit bidding at an auction it has conducted. Therefore, when the bank credit bids to acquire personal property at an auction it conducts, that sale is subject to tax unless the bank establishes it was a sale for resale. Assuming the bank does not make any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the sale to the bank will not be at retail and will not be subject to tax. (See Rev. & Tax. Code § 6094, Reg. 1669.) When the bank resells the property, that sale is subject to sales tax unless it is not at retail.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine  
Tax Counsel

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