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March 12, 1996

Mr. M--- T---
 Purchasing Manager
 J--- S--- Incorporated
 XX --- --- Road
 ---, CA XXXXX-XXXX

**Re: J--- S--- Inc.
 SR -- XX-XXXXXX**

Dear Mr. T---:

This is in response to your letter dated January 25, 1996 regarding the application of tax to your purchase of packing slip forms. You state:

“Enclosed is a ‘packing slip’ form we use when sending products to our customers. It is a multiple-part ‘NCR’ form that is used to describe the contents, quantity, and unit of measure being shipped. It also has a ‘Sold to’ and ‘Ship to’ text area where we input the customer’s name and address.

“After the form is completely filled with the above information, one copy is folded with the ‘ship to’ address showing, inserted into a clear plastic envelope, and attached on the outside of the container and used like a shipping label. Another copy is retained for our accounts payable records and the remaining copy used to accompany customs documents if the shipment is being sent overseas.”

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) The retailer may collect reimbursement from its customer if the contract of sale provides for such reimbursement. (Civ. Code § 1656.1.)

When sales tax does not apply, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California unless such use is specifically exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.) Although the purchaser owes the use tax, a retailer engaged in business in this state is required to collect the use tax from its purchaser and to pay that tax to this state. (Rev. & Tax. Code §§ 6202, 6203, 6204.)

You have not identified the type of container you use. We assume for purposes of this opinion that the containers to which you refer in your letter are nonreturnable containers such as boxes. Revenue and Taxation Code section 6364 exempts from tax the sale or use of nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container. This means that your purchase of nonreturnable containers such as boxes would be exempt from tax. Sales and Use Tax Regulation 1589, a copy of which is enclosed, explains that the exemption also applies to the sale and use of certain types of labels. Specifically, subdivision (b)(2)(B) provides that tax does not apply to sales of labels or name-plates if:

"The purchaser affixes them to nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers."

However, the exemption distinguishes between labels and other types of property such as shipping tags. Regulation 1589(c)(1) provides:

"Tax applies to sales of such items as price tags, shipping tags and advertising matter used in connection with the sale of property or enclosed with the property sold."

The distinction between a shipping tag and a label turns primarily on whether the vendor uses it for his or her own purposes. If the item is a shipping tag, used primarily for the benefit of the vendor, the item is not considered to be sold with the product; rather, the vendor is considered to be using it. On the other hand, if the item is descriptive of the contents of the container to which it is attached, conveying information for the benefit of the ultimate consumer, it is regarded as being purchased by the vendor for resale with the product. (See Business Taxes Law Guide Annotations 195.1740 (7/7/69), 195.1900 (8/10/53), 195.1935 (4/26/71).)

Therefore, in classifying the packing slips you purchase, we must first consider whether they are affixed to the container and, if so, how they are used. The sample packing slip you enclosed with your letter contains three parts. Imprinted on all of the parts is your company name and address. The top portion contains spaces designated for shipping information, and the bottom portion contains columns where the quantity, unit of measure, and description of the items purchased can be entered.

You state that you use one copy of the packing slip for your accounts payable records and that another copy is used to accompany customs documents if the shipment is being sent overseas. Since it appears that neither of these copies will be affixed to the nonreturnable containers, these copies are not labels the sales of which are exempt from tax.

You indicate that when you use the third copy, it is folded with only the shipping information showing. That copy is not attached to the container itself; rather, the copy is inserted into a clear plastic envelope that is attached to the outside of the container. We might consider a label attached by such a method to be affixed to the container for purposes of Regulation 1589. Nevertheless, we have previously concluded that where a printed item is both a label and a shipping tag, describing the product and the seller, and showing the name and address of the consignee, the seller is considered to be using the item more as a shipping tag than as a label, for some purpose other than resale. (See BTLG Ann. 195.2080 (3/16/55).)

This means that when your printer sells you these three-part packing slips to be used as described in your letter, your printer makes retail sales of the packing slips to you. If the sales take place inside California, the printer owes sales tax on its sales of the packing slips. The printer may collect reimbursement for its sales tax liability from you if the contract of sale so provides. If you purchase packing slips outside this state for use in California, you owe use tax on those purchases.

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

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: Sacramento District Administrator