STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 445-5550
FAX: (916) 323-3387

April 7, 1995

Mr. P--- J. L---
L---, C--- & V--- S---
XXX S. --- Street, Suite XXX
---, CA XXXXX

Re: N--- S---, Inc.

Dear Mr. L---:

This is in response to your letter dated March 31, 1995 regarding a claim for refund filed by N--- S---, Inc. You were apparently advised by the Board's Audit Review and Refunds Section that your client is not the proper party to file the claim for refund. You disagree.

You have not provided us sufficient information for us to fully understand the transactions at issue. If the sales in question occurred in California, the applicable tax would generally be sales tax. As you know, California's sales tax is imposed on the retailer. (Rev. & Tax. Code § 6051.) An amount paid by the purchaser to the retailer to reimburse the retailer for that sales tax is a matter of contract between the retailer and the purchaser. (Civ. Codes § 1656.1.) That is, an amount paid to the retailer by the purchaser itemized as "sales tax" is not, in fact, sales tax imposed by the state on the purchaser. The purchaser has no standing to file a claim for refund with the Board for such amounts since the purchaser made no payments of sales tax to the Board. Instead, the retailer is the only person who may file a claim for refund of sales taxes which the retailer believes it overpaid. When a retailer has collected reimbursement for sales taxes the retailer claims it overpaid to the Board, the Board does not grant a refund unless the retailer refunds any such reimbursement to the purchaser.

On the other hand, California's use tax is imposed on the purchaser of property purchased for use in California. (Rev. & Tax. Code §§ 6201, 6202.) Thus, a person who paid use tax does have standing to file a claim for refund of any such use taxes the person claims it overpaid. This is true whether that person holds a seller's permit or not, as long as the person paid use tax directly to the Board or paid it to a permitized retailer who gives the purchaser a receipt for such use tax. (See Reg. 1686.)

I note that you cite subdivision (b)(4) of Regulation 1701. This provision relates only to the tax-paid purchases resold deduction. That is, if a person pays tax or tax reimbursement when purchasing property and then resells that property prior to any use, the person may take a deduction against that person's tax liability on the resale of the property. The only claim for refund authorized in connection with this deduction is when a person does not take a tax-paid purchases resold deduction in the proper quarter. Such refund would be of the taxes that person paid that would have been offset by the taking of the deduction in the proper quarter. If the person does not resell the property in a taxable transaction, there is no tax liability against which to take the deduction. It does not appear that the deduction is relevant in this matter.

Since you have not adequately described the transactions at issue, we are unable to ascertain whether the tax was sales tax paid by the retailer or use tax paid by the purchaser. If the applicable tax is sales tax, then use tax does not apply and your client does not have standing to file a claim for refund. (See Rev. & Tax. Code § 6401.) Under such circumstances, your client's remedy is to request that the retailer file a claim for refund of any taxes claimed to have been overpaid. If your client paid use tax as discussed above, it does have standing to file a claim for refund. If you have information to establish that such was the case, then you should submit such information to the Audit Review and Refunds Section.

Sincerely,

David H. Levine
Supervising Staff Counsel

DHL:cl

cc: --- --- District Administrator
Mr. Robert Buntjer
Mr. Douglas Peter