

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-2634

MEMBER
First District

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

August 4, 1994

BURTON W. OLIVER
Executive Director

M--- L. B---, Trustee
B--- F--- Trust
XXXX --- Blvd.
---, CA XXXXX

Re: B--- F--- Trust

Dear Ms. B---:

I am writing in response to your letter dated June 8, 1994 concerning a sale by the B--- F--- Trust (Trust). You write that in 1992 the Trust sold printing equipment to X--- P--- & G---, a partnership, for \$35,000 and paid the sales tax due. Subsequently, the purchaser defaulted on its payments, leaving an unpaid balance of \$28,407 due on its promissory note. The Trust repossessed the equipment and sold it to G--- J--- for the amount of the \$28,407 unpaid balance.

You indicate that you were "advised that if the Trust does not claim a sales tax credit on the repossession, it need not pay another sales tax when the equipment is resold for the balance due on the Partnership's Promissory Note." You ask whether this is correct.

Discussion:

The state of California imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property occurring in this state, except for sales exempted or excluded by statute. (Rev. & Tax. Code § 6051.) A retail sale means a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Persons engaged in business as sellers of any kind of tangible personal property which is subject to sales tax if sold at retail in California must have a seller's permit from the Board of Equalization. (Rev. & Tax. Code § 6066.) The sale of the equipment to G--- J--- is a taxable retail sale unless an exemption applies, as discussed below, and this is true without regard to your claim of a "sales tax credit" on the repossession.

If a retailer has paid sales tax measured by an amount which is found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles, the retailer may take a bad debt deduction. (Rev. & Tax. Code § 6055.) Regulation 1642 (a copy of which is enclosed for your information) implements section 6055 and explains the amounts which are deductible for bad debts. The regulation specifically addresses repossessions, stating in part:

“When there is a repossession, a bad debt deduction is allowable only to the extent that the retailer sustains a net loss of gross receipts upon which tax has been paid. This will be when the amount of all payments and credits allocated to the purchase price of the merchandise, including the wholesale value of the repossessed article, is less than that price. Depending on whether the pro rata method or the contract method is used to apply payments, a retailer incurs an allowable bad debt deduction (1) if the wholesale value of the repossessed merchandise is less than the net contract balance (after excluding unearned insurance and finance charges) at the date of repossession or (2) if the wholesale value of the repossessed merchandise is less than the net merchandise balance at the date of repossession.” (Reg. 1642(f)(1).)

Since the sale to the partnership resulted in a repossession of property on which the Trust had paid sales tax, if the account was found worthless and charged off as specified in Regulation 1642, the Trust may claim a bad debt deduction pursuant to that regulation and section 6055 if the Trust sustained a net loss of gross receipts upon which the sales tax was paid. If you qualified for a bad debt deduction, the amount of the deduction would be determined by subtracting the amount of any unearned insurance and finance charges from \$28,407, and then further subtracting from that figure the wholesale value of the equipment. Such a deduction must be claimed on the sales and use tax return filed for the period in which the amount was found worthless and charged off for income tax purposes, or if the Trust is not required to file income tax returns, for the period in which the debt was charged off in accordance with generally accepted accounting principles.

I note that we find no record that the Trust holds a California seller's permit. If the Trust does not have a seller's permit and has no gross sales or purchases subject to use tax to report for the period in which the deduction may be taken, there would be no taxable sales or purchases from which the Trust may take a deduction. That is, a person can benefit from a bad debt deduction only if it owes tax on a measure from which the qualifying bad debt may be deducted.

As to the sale of the printing equipment to G--- J---, this is a new sale, separate from the sale to the partnership. It is a taxable sale at retail unless it is an exempt sale. Although you have provided no information to indicate that this is an exempt sale, I note for your assistance the possibility that the sale may be an exempt occasional sale. Under Revenue and Taxation Code section 6006.5(a), an occasional sale includes:

“A sale of property not held or used by the seller in the course of activities for which he or she is required to hold a seller’s permit or permits or would be required to hold a seller’s permit or permits if the activities were conducted in this state, provided the sale is not one of a series of sales sufficient in number, scope, and character to constitute an activity for which he or she is required to hold a seller’s permit or would be required to hold a seller’s permit if the activity were conducted in this state.”

Occasional sales, as defined above, are exempt from sales tax. (Rev. & Tax. Code § 6367 (this exemption does not apply to the sale of vehicles, vessels, or aircraft).)

For your information, I am enclosing a copy of Regulation 1595 which explains and implements the occasional sales exemption covered by sections 6006.5 and 6367. However, since the sale of the printing equipment to the partnership was not an exempt sale, I assume for the purposes of this opinion that the sale of the same equipment to Mr. J--- is likewise not exempt. Tax, therefore, is due on the gross receipts from the sale of the printing equipment to Mr. J---. If you write off a bad debt relative to the repossession of the printing equipment, you may take a bad debt deduction against your liability on the sale to G--- J--- in the amount that the \$28,407 exceeds the sum of any unearned insurance and finance charges on the sale to the partnership plus the wholesale value of the equipment.

I hope this information is of assistance. Please write again if you have further questions.

Sincerely,

Sharon Jarvis

SJ:es

Encs.: Regs. 1595 & 1642

cc: -- - District Administrator