



STATE BOARD OF EQUALIZATION

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December 14, 1994

BURTON W. OLIVER
Executive Director

Ms. [S]
Accounting Manager
[F]
XXX --- ---
--- ---, CA XXXXX

No Permit

Dear Ms. [S]:

This is in response to your letter dated October 20, 1994, in which you state that your understanding is that sales to federal credit unions are tax exempt and that sales to state-chartered credit unions are not tax exempt. Further, you have been advised by an Oregon chartered credit union that they are under the same tax exemption status as that provided to the federal credit unions. You called the Board of Equalization district office and state that you were advised that other states are not included in the definition of a "person," but the gentlemen to whom you talked was unclear as to whether sales to sister state-chartered credit unions are classified as a part of the state government and therefore tax exempt.

Section 6051 of the Revenue and Taxation Code imposes the sales tax on retailers for the privilege of selling tangible personal property at retail. The measure of tax is based on gross receipts from the retail sales in this state of tangible personal property.

Revenue and Taxation Code section 6015 provides in pertinent part that a retailer includes every seller who makes any retail sale or sales of tangible personal property. Section 6014 provides that the term "seller" includes every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of sales tax. Section 6007, in part, provides that retail sale means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property.

Revenue and Taxation Code section 6005 defines person to include:

"any individual, firm, copartnership, joint venture, association, social club,

fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this State, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.”

Sales to the Federal government and its instrumentalities are exempt from sales tax. Rev. & Tax. Code § 6381. Federal credit unions are instrumentalities of the Federal government, along with other federally-chartered financial institutions, such as federal land banks, federal reserve banks, and federal home loan banks. Sales and Use Tax Regulation 1614(a)(4). Therefore, your understanding that sales to federal credit unions are exempt is correct. However, the use of the federal exemption for sales to state-chartered credit unions is not provided for under the law and that exemption cannot be extended by analogy to include state-chartered credit unions.

The term “person” does not include other states. To that extent, the information you received is correct. However, the sales tax applies when a retailer makes a retail sale that is not exempt. If the party making the sale is not a person under section 6005, it will also not be a seller under section 6014 or a retailer under section 6015. That is, if the party making the sale is not a person under section 6005, it will not be a retailer under section 6015, and sales tax will not apply. Whether the purchaser is a person under section 6005 is irrelevant to the analysis.

Assuming your sales occur in California, absent an exemption they are taxable. Sales are not taxable if they are sales of tangible personal property which are made out of state and such personal property will not be used in California. Thus, your sales to Oregon chartered credit unions are taxable provided they are made in this state. Our understanding is that sales in question are made in California (the property delivered by you to the purchaser's customers in California). Such sales are subject to sales tax.

The answers contained herein are general in nature. If you have questions concerning a particular contract or sale, please feel free to write again. If we receive detailed information about a contract or sale, we can give more specific advice.

Yours very truly,

Anthony I. Picciano
Staff Counsel

AIP:wk

cc: Oakland District Administrator