



STATE BOARD OF EQUALIZATION

February 6, 1952

Gentlemen:

This is in answer to your letter of December 19, 1951, in which you request further information concerning the application and measure of the tax where you sell property to "A", an out-of-State retailer who has neither a sales permit nor a certificate of authority to collect the use tax, and deliver it to "B" in this State for the convenience of "A" where "A" purchases the property for resale to "B" who may or may not be an ultimate consumer of the personal property shipped.

You request clarification with respect to our advice that the measure of the tax on such sales is the charge made by "A" to "B". You feel that the measure of the tax might more properly be the price which you bill "A" in view of the fact that your company cannot determine the price "A" charges "B". You then further state that the property which you sell to "A" may become a component part of other equipment for which "A" bills "B" a single charge, and that this would further complicate determining your measure of tax liability on the basis of "A's" charge to "B".

As indicated by Section 6007 of the Sales and Use Tax Law, and as you agree, the delivery to "B" in this State constitutes a retail sale by you. That section specifically provides that the deliverer "shall include the retail selling price of the property in his gross receipts". In the situation outlined by you, the only retail selling price of the property involved would be either a part, or the entire charge that "A" makes to "B". As the charges you bill "A" are charges to a person who will resell the property, such charges have never been considered by this Board as the measure of this tax in the situation outlined in Section 6007. Regardless of difficulty in determining the retail selling price charged by the out-of-State retailer to the consumer this is the measure of the tax as specified in Section 6007 and, accordingly, should be determined to the best of your ability in computing your gross receipts subject to the sales tax.

As we have indicated in our letter of December 5, if "B" is also going to resell the property prior to use and is accordingly not a consumer, the tax would not apply and its inapplicability could be established by taking a resale certificate from "B" pursuant to Sales and Use Tax Ruling 68, copy of which we enclose.

We note that you say that in many instances "A" incorporates this property into finished equipment. We wonder if we have misunderstood your inquiry in view of the fact that, as you are making a local delivery, and as "A" does not make local sales it is

difficult for us factually to see how "A" could incorporate the property purchased from you into a finished product sold by "A" , If such is the case, however, pursuant of our interpretation of Section 6007 , it will still be necessary for you to determine what part of the final price charged "B" by "A" constitutes the retail selling price of the property delivered by you . If you meant by your statements in the third paragraph of your letter of December 19 that "B" incorporates the property delivered into his property for resale to another party whom we shall designate as "C", "B" would apparently not be a consumer and accordingly could furnish you with resale certificates evidencing the fact that he is reselling the property to "C" in connection with a completed product.

If we have not sufficiently clarified the situation, we shall be happy to render a further opinion upon being furnished complete information relating to this matter.

Very truly yours.

E. H. Stetson,
Tax Counsel

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