



STATE BOARD OF EQUALIZATION

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July 21, 1995

T--- S--- O--- Company
P.O. Box XXX
---, CA XXXXX

Attn: J--- L. P---

**Re: Sales and Use Tax Regulations 1620 and 1628
SZ -- XX-XXXXXX**

Dear Ms. P---

This is in reply to your June 13, 1995 letter and to confirm the advice Senior Tax Counsel Ronald L. Dick gave you over the telephone on July 20, 1995 regarding the application of sales tax to your sales of asphalt to a Utah customer.

You stated the following facts:

“We are currently selling asphalt to a customer based in Utah. They have a valid seller's permit for Utah which we have on file in our office. They do not have a customer base in California and intend to resell the asphalt strictly in Utah. A letter to that effect is also on file in our office. Transportation of the asphalt was arranged by our customer through the leasing of rail cars. The product is loaded into the rail cars at the refinery located in --- County California. Ownership of the product becomes our customer's at that time.”

Given this information you asked whether your sale is nontaxable under either Sales and Use Tax Regulation 1620, Interstate and Foreign Commerce, or 1668, Resale Certificates.

Regulation 1620 provides an exemption from sales tax for the sale of tangible personal property when pursuant to the contract of sale, the retailer is required to ship the property and does ship the property to a point outside this state by means of the retailer's facilities or by delivery to a carrier, whether hired by the purchaser or not, for shipment to the out-of-state point. (Reg. 1620, subd. (a)(3)(B).)

Sales tax applies when the property is delivered to the purchaser or the purchaser's representative in this state whether or not the purchaser immediately transports the property to an out-of-state point. (Reg 1620, subd.(a)(3)(A).) As we understand your facts, you do not deliver the property to a carrier hired by the purchaser but deliver the asphalt to rail cars leased by the purchaser; that is, you deliver the asphalt to the purchaser in this state. Therefore, your sale does not qualify for exemption under Regulation 1620.

Regulation 1668 provides the application of tax to sales for resale. A sale for resale is not subject to sales tax. In order for you to document a sale for resale, you must timely obtain a resale certificate from the purchaser. Otherwise, you are required to present satisfactory evidence that the specific property sold:

- (1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or
- (2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or
- (3) Has been used or consumed by the purchaser and the purchaser has paid the use tax directly to this State. (Reg. 1668, subd. (c))

The Board of Equalization's legal staff has taken the position that a California retailer may accept a valid resale certificate from a purchaser for property delivered in California which is purchased for resale out-of-state. The certificate must contain the elements required by Regulation 1668, subdivision (b). If the purchaser does not have a California seller's permit number, the out-of-state permit number must be noted on the certificate. If the out-of-state retailer is purchasing property not normally resold in his business, the resale certificate must state that the specific property is being purchased for resale. As provided in subdivision (d) of Regulation 1668, the certificate must be accepted in good faith. (Bus. Taxes Law Guide Annotation 475.0139.)

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July 21, 1995
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If your out-of-state customer does not issue you a valid resale certificate, your company is not relieved of the responsibility for the sales tax on the basis that the out-of-state customer refuses to pay sales tax reimbursement to you.

I trust this answers your questions, however if you need additional advice please do not hesitate to write.

Yours very truly,

Anthony I. Picciano
Staff Counsel

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