

**STATE BOARD OF EQUALIZATION**

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May 18, 1990

Ms. S--- A---
Office Supervisor
S--- P--- M---, Inc.
XXXX --- ---
---, CA XXXXX

S- -- XX-XXXXXX

Dear Ms. A---:

This is in reply to your April 18, 1990 letter regarding the application of sales tax to your sale of a mold to C--- C--- Co., Ltd. You provided the following background:

“We are a custom injection molder and mold maker. Typically, our customer will first place an order for a mold, which we build in our tooling department. We will then run a small number of samples in our production facility in order to determine that the mold has been built to specifications. The samples we produce are the basis for billing out the mold, along with the appropriate sales tax rate. Our customer will then approve the samples, and pay for the mold, including tax. After this happens, if the customer has ordered production parts, we will place the mold into full production, shipping the parts against a separate purchase order.

“In this case, our customer, C---, placed an order for a mold, which we built and then shipped samples (to Japan) in March 1989. As is customary, at that time we billed out the mold, including six percent (6%) sales and use tax (the appropriate rate for Orange County). We then remitted the tax to the State Board of Equalization in April 1989 on our March 1989 Sales and Use Tax Return. After making some adjustments to the mold, in July 1989 we shipped some additional samples (to Japan). Then in December 1989, C--- paid for the mold, including tax. However, at that point, we did not place the mold into full production. Instead, in March 1990 C--- picked up the mold from our facility and shipped it to Japan.”

C--- has claimed that a refund of sales tax is due, because the mold was never placed in production in the United States.

California sales tax is imposed on retailers at the applicable percentage of the gross receipts from the sale of all tangible personal property sold in this state. (Rev. & Tax. Code § 6051.) We are enclosing a copy of Sales and Use Tax Regulation 1620, Interstate and Foreign Commerce, which provides the application of sales tax to sales of property which is purchased for use outside California. Subdivision (a)(3)(C)1 of the regulation provides:

“Sales tax applies when the property is delivered in this state to the purchaser or the purchaser’s representative prior to an irrevocable commitment of the property into the process of exportation. It is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country.”

Since your letter states that C--- picked up the mold from your facility in this state and shipped the mold to Japan, your sale of the property to C--- occurred in this state and is subject to sales tax regardless that C--- later shipped the mold to Japan.

We agree that your producing samples to test the quality of the mold is not a taxable use of the mold. (Bus. Taxes Law Guide Annot. 210.0560.) However, your not placing the mold into production in California has no bearing on the application of tax in this case. In fact, if you had placed the mold in production prior to selling it, the tax result would be more harsh. Because you would have made a use of the mold prior to sale, you would owe tax on such use. You would then also owe use tax on your later retail sale of the mold.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr
Enc.