

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 323-7712

September 7, 1984

Mr. S--- S---  
S--- C--- P--- A---  
XXXX --- Street  
---, CA XXXXX

Dear Mr. S---:

Your request for a written opinion has been referred to me for response. We understand that you have questions regarding whether the sales made by the S--- C--- P--- A--- (SCPA) are subject to sales tax. We further understand that the SCPA does not hold more than three auctions in a twelve-month period in the administration of any one estate. You cite a sales tax counsel opinion of October 24, 1952, as authority that sales by the SCPA are not subject to sales tax.

Applicable law is Regulation 1573 (copy enclosed) which, in interpreting Revenue and Taxation Code Section 6015, states (in pertinent part):

“Tax applies to the sale of tangible personal property by an officer of the court such as a sheriff, commissioner, assignee for the benefit of creditors, executor or administrator (including a bank), or other officer appointed by a court to make the sales if the officer is a retailer with respect to that sale.

“Generally, an officer is a retailer if he makes three or more sales of tangible personal property for substantial amounts, or a substantial number of sales for relatively small amounts, in any period of 12 months in the conduct or liquidation of a single business or estate.”

The sales tax counsel opinion of October 24, 1952, which is cite is Business Tax Law Guide Annotation 395.0960, which states:

“Public Administrators, sales by, governed by the same general rule as executors and administrators. Thus, tax is inapplicable if but one or two sales are made during administration of a particular estate, regardless of how many estates may be in the course of administration by a public administrator. If, however, the administrator makes three or more sales in

substantial amounts during any twelve-month period during the administration of a particular estate the tax is due. 10/24/52.”

An auction may be a sale of one item or a sale of a “lot” (a number of items) to a single bidder. In either case, the transactions would be regarded as a single sale for purposes of the Sales Tax Law. If no more than two such sales per estate in any twelve-month period are made, the sales tax would not apply to such sales; and the SCPA would not be required to obtain a seller’s permit.

However, as is commonly the case, an auction may consist of a number of sales of tangible personal property. The general rule is that each time the hammer drops there has been a sale. This is true whether there are sales to several bidders or several sales to the same bidder. If there are more than two subsequent sales per estate in a twelve-month period, under Regulation 1573 and Annotation 395.0960 (quoted above), sales tax will apply and the SCPA must obtain a seller’s permit and remit sales tax to the Board (Revenue and Taxation Code Sections 6015 and 6203), even though all such sales occur at a single auction.

We are of the opinion that it is likely that the SCPA makes more than two sales for a substantial amount at auction in a twelve-month period for one estate. If such is the case, the SCPA must obtain a seller’s permit.

If we may be of any further assistance, please write this office.

Very truly yours,

James A. Davis  
Tax Counsel

JAD:jlh

Enc.

cc: --- – Compliance (VES)