



STATE BOARD OF EQUALIZATION

September 23, 1964

T---, Inc.
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 ---, New Jersey XXXXX

Attention: Mr. A--- J. B---
 Treasurer

XX-XXXXXX
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Gentlemen:

This is in response to your petition for redetermination dated June 24, 1964, which was referred to the legal staff for review.

Our New York office has recommended that the two items mentioned in the second paragraph of the petition be deleted from the measure of liability. It appears, therefore, that the only item in dispute is the tax assessed on the furnishing of sensitized paper under your contract with the Department of Motor Vehicles. You contend that your company should not be held liable for the tax because the Department refuses to reimburse you. You also question the statutory authority for imposing the tax on sales to a state agency.

In general, a liability for sales tax is incurred upon the sale of tangible personal property at retail in this state unless there is some specific statutory exemption. No exemption has been made for sales to the State of California or its political subdivisions. Accordingly, when a retailer makes a sale to a state agency, he is liable for the tax to the same extent as in any other sale.

The sales tax is imposed upon the retailer for the privilege of selling tangible personal property at retail in this state. Although the retailer is entitled to collect reimbursement for the tax, he is ultimately responsible for its payment. Thus, he is liable for the tax, even though he is unable to obtain reimbursement from the purchaser. Whether or not he has a right of action against the purchaser for the amount of the reimbursement depends entirely on the agreement between the parties.

The latter point was litigated in Pacific Coast Engineering Co. v. State of California, 111 Cal. App. 2d 31. There the question was whether the plaintiff could require the state to pay sales tax reimbursement on the purchase of two scows when the contract was silent on the subject of sales tax. In deciding the issue against the plaintiff, the court stated:

“Since the tax is levied upon the retailer and his right of reimbursement is optional and may be waived by him, it follows, we think, that reimbursement of the amount of the tax rests upon the contractual arrangements of the parties. The buyer-consumer has no obligation in reference to the tax. As to him the ‘selling price’ is the amount he must pay to obtain the goods whether or not the sales tax forms a part of the selling price. If the retailer is to ‘pass on’ the tax to the buyer-consumer the tax must form a part of the total price, which the buyer pays or agrees to pay. When, therefore, the parties have contracted as to the price, the buyer is bound to pay that price and no more. And even though the contract is silent as to whether that price includes or excludes a sales tax, the law will not by implication add to the burden of the buyer the amount of the tax as to which, the contract being silent, he is not bound.”

In view of the above, we must recommend that the petition for redetermination be denied, subject to the adjustment noted earlier.

Very truly yours,

Patricia McKinney
Assistant Counsel

PM:spg

cc: Out-of-State – District Administrator
New York