

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION - MIC 82
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
Telephone No.: (916) 324-3828
Fax No: (916) 323-3387

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October 17, 1995

Mr. R--- A---, CPA
XXXX --- Street, Suite XXX
--- ---, California XXXXX

RE: [Unnamed Taxpayer]
Resale Certificates

Dear Mr. A---:

I am responding to your letter to the Legal Division dated September 4, 1995. You ask if your client's purchasers may issue it resale certificates, so that it may sell its products to them ex tax for resale, if at the time of purchase the purchasers know that some of the items purchased will be consumed by them and some resold but cannot designate any particular item that will be resold or consumed. You ask for a written determination on this matter. Since you did not identify the taxpayer, this letter does not constitute specific written advice to the taxpayer under Revenue and Taxation Code section 6596. Rather, it constitutes general comments regarding the applicability of California Sales and Use Tax Law to a set of hypothetical facts. Your client may thus rely on this letter as the opinion of the Legal Division, but it is not effective to estop the Board from asserting tax in the event of an adverse result at audit.

You describe your client's operation as follows:

"My client is located in California and distributes name brand eyewear to a network of authorized dealers located throughout the Western hemisphere.... [¶] Sales are made only to authorized dealers in good standing....

"The Company sells specific name brand lines of eyewear and related parts....

"All products that the Company sells are non-corrective through the time of sale and delivery to the dealer. The Company does not in any way handle prescription lenses. The Company does not make, buy, nor sell corrective lenses.

"The eyewear is shipped with either sun or plano lenses. The frames sold with plano lenses may or may not be used for prescription purposes. Some dealers

make specialized sun or safety lenses to be installed into the frame (therefore they purchase the frame with the less expensive plano lenses).”

Your client’s difficulty is that, at the time of purchase, it cannot determine which items are to be used for corrective purposes and which will not. You indicate that often the dealer himself also does not know, depending on the nature of his business.

OPINION

As you note, licensed physicians, surgeons, and optometrists, are, by statute, the consumers of ophthalmic materials that they use in the performance of their professional services in the diagnosis, treatment or correction of eye conditions, and dispensing opticians are consumers of ophthalmic materials dispensed pursuant to a prescription prepared by a physician, surgeon, or optometrist. Tax applies with respect to sales to such persons. (Reg. 1592(a) & (b).) Such persons are, of course, retailers of ophthalmic materials which they sell under other conditions and so may purchase such items ex tax for resale by timely issuing their suppliers resale certificates.

A resale certificate must be issued timely and in good faith. (Reg. 1668(a)(1).) We have previously determined that a buyer who purchases a bunch of items of tangible personal property knowing that some will be resold and some consumed but who, at the time of purchase, cannot in good faith determine which specific items will be resold and which will be consumed, may issue his vendor a resale certificate for the whole lot. The buyer would then be responsible for self-reporting use tax on the items consumed.

The facts you recite indicate that your client does not sell ophthalmic materials to persons who could be consumers only. Therefore, it may accept under the above conditions, timely resale certificates that conform to the requirements of Regulation 1668, thereby excluding such sales from tax. As you note, however, it may not accept resale certificates from persons who could only be consumers, e.g. optometrists whom your client knows do not sell ophthalmic materials under conditions other than those provided in Regulation 1592(a).

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Senior Staff Counsel

JLW:sr

cc: --- --- District Administrator - - -