

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-5550

February 6, 1990

A--- G---, President
--- --- --- --- Inc.
--- Building
XXXX --- Road, Suite XXX
---, California XXXXX

Dear Mr. G---:

This is in response to your letter dated January 16, 1990 in which you ask our opinion regarding the following circumstances:

“A number of people form a partnership known as XYZ Company to sell tangible personal property. The partnership obtains a seller’s permit from the Board of Equalization. The partnership issues timely resale certificates, that meet the requirements of Revenue and Taxation Code Section 6093 and Sales and Use Tax Regulation 1668, to their vendors to acquire merchandise ex-tax.

“After operating the company for a period of time, the partners decide to incorporate the business and also decide to name the corporation XYZ Company, Inc. The partnership timely informs the Board of its dissolution. The Board cancels its seller’s permit and simultaneously the corporation obtains a new seller’s permit from the Board.

“It is our opinion, based on the above facts, that the resale certificates issued by the partnership become null and void at the point in time that the partnership’s seller’s permit is cancelled by the Board. As such it is also our opinion that the vendors cannot rely upon the partnership’s resale certificates to support sales for resale to the corporation.”

Obviously, if XYZ resold the purchased property without use and if the vendors could establish this, the vendors would not owe sales tax on their sales to XYZ. I assume this question arises because the vendors sell property to XYZ ex tax in reliance on the resale certificates issued by the partnership, and XYZ thereafter uses that property. These circumstances would raise two questions: are the vendors relieved of sales tax liability by virtue of their reliance on the

partnership's resale certificates; and does XYZ owe use tax by virtue of its use of the property purchased ex tax.

Since the resale certificates were issued to the vendors by a person other than the current purchaser, those resale certificates would not necessarily relieve the seller of liability for sales tax. However, depending on the actual facts, the purchaser will be primarily liable for the tax if the purchaser thereafter consumes the property. Presumably, XYZ allowed the vendors to rely on the now invalid resale certificates and allowed the vendors to believe they were making sales for resale. Unless the vendors had knowledge that the XYZ Company that had issued the resale certificates was not the same person as the XYZ Company thereafter making purchases (at retail) ex tax pursuant to those resale certificates, under these circumstances the integrity of the Sales and Use Tax Law requires XYZ to affirmatively notify the vendors that they may not rely on those resale certificates when making sales to XYZ. (Cf. Decorative Carpets, Inc. v. State Board of Equalization (1962) 58 Cal.2d 2252, 255.) Otherwise, XYZ will be regarded as having adopted the resale certificates issued by its predecessor and, as specified in those certificates, in the event any of the purchased property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, XYZ will owe tax measured by the purchase price of such property.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

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