



---

**STATE BOARD OF EQUALIZATION**

916-322-3684

November 4, 1986

Mr. Begin deleted text REDACTED TEXT End deleted text

Dear Mr. Begin deleted text REDACTED TEXT End deleted text:

Your letter of September 19, 1982 has been referred to me for a reply. You request an opinion concerning the correct application of tax to sales by your client, Begin deleted text REDACTED TEXT End deleted text.

As I understand the facts, Begin deleted text REDACTED TEXT End deleted text is a shopping service for individuals who lack the time or skills to shop for themselves. Begin deleted text REDACTED TEXT End deleted text purchases personal items for its clients, paying the full retail price which includes any and all sales taxes. The price charged to its clients is the same price Begin deleted text REDACTED TEXT End deleted text pays for the item plus a service charge for labor in obtaining the item.

California Sales and Use Tax Law imposes a tax on the gross receipts of retailers from all retail sales of tangible personal property in this state unless such sales are otherwise exempt from taxation by statute (Rev. & Tax. Code § 6051). Section 6012 of the code defines "gross receipts" to mean the total amount of the sale, including any services that are part of the sale. Section 6006 defines "sale" as the transfer of title or possession of tangible personal property. A "retail sale" is defined in section 6007 as a sale for any purpose other than resale in the regular course of business. A "retailer" is defined in section 6015 as a person engaged in making sales of tangible personal property.

Applying the above criteria, we are of the opinion that Begin deleted text REDACTED TEXT End deleted text is a "retailer." As described, Begin deleted text REDACTED TEXT End deleted text is transferring title of tangible personal property to its clients. This is a "sale" as defined in section 6006. Therefore, Begin deleted text REDACTED TEXT End deleted text is a "retailer" pursuant to section 6015 since it is engaged in making sales of tangible personal property to its clients.

We note that Revenue and Taxation Code section 6066 and Sales and Use Tax Regulation 1699, which interprets and applies the code, provides that every California retailer shall obtain a seller's permit from the Board. Therefore, since Begin deleted text REDACTED TEXT End deleted text is a retailer, it should obtain a permit from the Board. Once a permit has been obtained, the retailer may purchase property for sale in the regular course of business ex tax by providing its vendor with a resale certificate (see Sales and Use Tax Regulation 1668 (Resale Certificates)).

We also note that Sales and Use Tax Regulation 1701 (Tax-Paid Purchases Resold) provides that:

“a retailer who resells tangible personal property before making any use thereof (other than retention, demonstration or display while holding it for sale in the regular course of business) may take a deduction of the purchase price of the property if, with respect to its purchase, he has reimbursed his vendor for the sales tax....”

Begin deleted text REDACTED TEXT End deleted text may be eligible for the tax-paid purchases resold deduction provided for in Regulation 1701 since it has already paid sales tax reimbursement to its vendors on the items of tangible personal property it sells in the regular course of its business. To be eligible for this deduction, however, Begin deleted text REDACTED TEXT End deleted text must not have made any use of the property itself other than retention, demonstration, or display while holding the property for sale. The deduction under the caption “Tax-paid purchases resold” must be taken on Begin deleted text REDACTED TEXT End deleted text sales and use tax return for the quarter in which the sale of the property is included. If the deduction is not taken in the proper quarter, Begin deleted text REDACTED TEXT End deleted text may file a claim for a refund of tax with the Board.

Finally, Begin deleted text REDACTED TEXT End deleted text sales are “retail sales” since Begin deleted text REDACTED TEXT End deleted text is making the sale to a buyer who did not purchase the items for resale in the regular course of its business (Market Street Railway Company v. State Board of Equalization, 137 Cal.App.2c 87). Also, the “gross receipts” from Begin deleted text REDACTED TEXT End deleted text sale of property to its clients is the total price charged to the client which includes, as part of the sale pursuant to section 6012, the service charge for its labor in obtaining the property. Thus, since Begin deleted text REDACTED TEXT End deleted text is a retailer making retail sales of tangible personal property, the gross receipts from such sales are taxable pursuant to section 6051.

We hope the above information is helpful. Enclosed for your review and reference you will find a copy of Regulation 1699 (Permits), 1668 (Resale Certificates), and 1701 (Tax-Paid Purchases Resold). Please do not hesitate to contact this office if you have any further questions concerning this matter.

Very truly yours,

Robert J. Stipe  
Tax Counsel

RJS:sr

Encs.