



STATE BOARD OF EQUALIZATION

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September 15, 1994

BURTON W. OLIVER
Executive Director

M--- H---
Excise Tax Agent
O--- C--- Corp.
P.O. Box XXX
---, TX XXXXX-XXXX

Dear Mr. Hastings:

Re: O--- C--- Corporation
SZ -- XX-XXXXXX

This responds to your letter dated June 22, 1994. You state that O--- C--- Corporation (O---) manufactures and distributes chemicals. O--- has a plant and several distribution sites located in California.

You request an opinion on how the California Sales and Use Tax Law applies to several different situations in which O--- sells its products to a buyer which your letter describes either as "not located and not registered for sales tax in California" or "located and registered for sales tax in California". For purposes of this opinion, I understand a buyer "located and registered for sales tax in California" to mean a buyer who holds a California seller's permit. I also understand, for purposes of this opinion, that a buyer "not located and not registered for sales tax in California" means a buyer who does not have a California seller's permit, and who is not engaged in business in California within the meaning of Revenue and Taxation Code section 6203.

You also request advice on what documentation O--- must obtain to claim an exemption or exclusion from California sales or use tax in appropriate situations.

I first will discuss the general application of the California Sales and Use Tax Law, and then address each specific scenario for which you request advice.

General Discussion:

A retailer who makes sales of tangible personal property at retail in California must pay sales tax for the privilege of selling that property at retail in this state. (Rev. & Tax. Code § 6051.) A retail sale means a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.)

Any person engaged in the business of selling tangible personal property in California must apply for and obtain a seller's permit from the Board of Equalization. (Rev. & Tax. Code § 6066, Reg. 1699(a).) Such a seller may purchase property extax for resale by issuing a resale certificate containing its California seller's permit number when it purchases tangible personal property if the property is purchased for resale in the ordinary course of business and the purchaser intends to make no use of the property other than retention, demonstration or display while holding it for resale. (See Rev. & Tax. Code §§ 6091, 6092, 6094; Reg. 1668(a)(2).) If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding the property in the regular course of business, that use is taxable to the purchaser. (Rev. & Tax. Code § 6094(a).)

When the sales tax does not apply (e.g., the sale occurs outside of California), use of the property in this state is subject to use tax if the property was purchased from a retailer for use in California. (Rev. & Tax. Code § 6201.) Although the use tax is owed by the purchaser, a retailer who is engaged in business in California must collect the applicable use tax from the purchaser and remit it to the Board of Equalization. (Rev. & Tax. Code § 6203.)

As noted above, section 6007 defines "retail sale" for purposes of the California Sales and Use Tax Law. In addition, the second paragraph of section 6007 defines a person who would otherwise be making a sale for resale to be the retailer under specified circumstances. Under the second paragraph of section 6007, when a person who is a retailer engaged in business in California ships property to a California consumer/end user pursuant to a retail sale made by a retailer not engaged in business in California, the supplier shipping the property is deemed the retailer and owes sales tax or must collect and remit the applicable use tax to Board of Equalization. The measure of that tax is the retail selling price paid by the consumer/end user.

Situation 1:

One type of transaction under "situation 1" is where O--- sells its product to a buyer who is neither located nor registered as a seller in California. Pursuant to the buyer's instructions, O--- ships the product from its Washington plant directly to the buyer's customer in California. The California customer is the end user of the product. Since O--- is engaged in business in California and the buyer is not, in this type of transaction O--- is deemed the retailer under the second paragraph of section 6007 and must collect the use tax from the consumer/end user and remit it to the Board of Equalization. The tax is measured by the retail selling price which O---'s

buyer charges its customer. The fact that O--- is shipping the product from its Washington plant is irrelevant to the analysis under section 6007.

The other type of transaction under “situation 1” is the same as discussed in the previous paragraph except that the buyer's California customer is buying the product for resale. The second paragraph of section 6007 reclassifies a person as a retailer only when that person makes a delivery to a California purchaser pursuant to a retail sale made by a retailer not engaged in business in California. Since here the sale by the buyer to its customer is a sale for resale, and, therefore, not a retail sale, O--- is not deemed the retailer under section 6007. However, to document this O--- should take a timely California resale certificate in good faith from its buyer's California customer instead of collecting use tax from the customer. Enclosed, for your information, is a copy of Regulation 1668 which explains the essential elements of a valid resale certificate.

Situation 2:

This situation presents two variations which are identical to those discussed in “situation 1” except that O--- is shipping the product from its California plant, instead of its Washington plant. As noted above, delivery from inside or outside California is irrelevant to the analysis under the second paragraph of section 6007. Therefore, the same analysis applies to “situation 2” as applied to “situation 1”; when O--- delivers the property from its California plant directly to the buyer's California customer, O--- is the retailer, and owes sales tax unless the California customer is purchasing for resale. If the buyer's California customer purchases property for resale, O--- is not deemed the retailer, but should obtain a California resale certificate from the buyer's customer to document this.

Situation 3:

In this situation, O--- sells its product to a buyer located and registered with the Board of Equalization as a seller in California. O--- ships its product from its Washington plant to the buyer's customer in California. In one variation, the California customer consumes the property, and in the other variation, the California customer resells the property. Since the buyer is engaged in business in California and the buyer resells the property, it may issue O--- a resale certificate showing a California seller's permit number. O--- has no obligation in regards to collecting or remitting California sales or use tax in this situation as long as it takes a timely California resale certificate in good faith from the buyer as documentation that the sale of the property to the buyer was a sale for resale. Although the California customer's use or resale of the property is relevant to the tax liability of O---'s buyer, it does not affect O---'s liability when O---'s buyer holds a California seller's permit.

Situation 4:

This situation presents two variations which are identical to those presented in “situation 3” except that O--- ships its product from its California plant. The analysis and conclusions in our response to “situation 3” are applicable to the two variations of “situation 4”.

Situation 5:

O--- sells its product to a buyer which is not located or registered in California. At the buyer's request, O--- ships the product from its Washington plant to a company in California which will perform further processing of the product for the buyer. The processor subsequently ships the processed product to the buyer's customer. The customer may be the end user or it may resell the product. The customer may be located in California or it may be located out of this state. In all four variations, the buyer is purchasing O---'s product for resale. O---, therefore has no tax liability unless the second paragraph of section 6007 applies. For the second paragraph of section 6007 to apply O--- would have to be the party delivering the property to the end user. However, in all four variations O--- is not delivering the property to the end user, but to the California processor who will later deliver the property either to the end user or to a reseller. If O--- documents the fact that it is shipping the product to a California processor for further processing on behalf of the buyer (as opposed to on behalf of O---) and not for end use, O--- is not subject to tax liability.

Situation 6:

“Situation 6” is identical to “situation 5” except that O--- is shipping its product from its California plant. The analysis and conclusions in our response to “situation 5” are applicable to “situation 6”.

I hope this information is of assistance. Please write again if we may answer any further questions.

Sincerely,

Sharon Jarvis
Staff Counsel

SJ:es
Enc. Reg. 1668

cc: OH - District Administrator