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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

LEGAL DIVISION - MIC: 82
450 N STREET, SACRAMENTO, CALIFORNIA
(P. O. BOX 942879, SACRAMENTO, CA 94279-0082)
TELEPHONE: (916) 322-2976
FAX: (916) 323-3387

JOHAN KLEHS
First District, Hayward

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Second District, Stockton

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Third District, San Diego

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October 26, 1995

REDACTED TEXT

BURTON W. OLIVER
Executive Director

Re: REDACTED TEXT

Dear Mr. Kudo:

This is in response to your letter dated August 9, 1995, regarding the application of tax to the transfer of firearms. You state:

“Thank you for replying to my first letter dated May 18, 1995. I appreciated the lengthy discussion regarding the laws pertaining to firearms transfers. I have additional information which may help clarify whether I am a retailer and therefore required to collect sales & use tax.

“I understand your reference (Reg. 1501) to the fact that I am not to collect sales tax on my transfer service fees.

“However, your letter requested more information (e.g. copies of sales/transfer forms) in order to determine if my transfer service is required to collect sales tax.

“Please find enclosed two (2) different types of firearms sales transfer paperwork conforming to the State of California, Department of Justice, Firearm Division. Note that these examples are not current DOJ paperwork, nor are they real people’s names. They are however, representative of how the firearms transactions are done.

“EXAMPLE #1:

“Note that this paperwork is a situation where two (2) private parties sell or transfer a firearm between themselves, thru a licensed California firearms dealer (P.C. 12701). These two private parties are residents of California. They wish to transfer a firearm thru a licensed dealer. They may have exchanged money, services or may have been a gift in order to transfer the firearm. Conforming to

Federal laws, I log into my Federal Acquisition/Disposition book the receipt of the firearm from the seller. The buyer and seller then fills out the State Dealer Record of Sale form (Example #1). The state fee I collect is: \$14.00 and the store fee I charge the buyer is \$16.00 to cover expenses, storage, and insurance. The total fee payable to me by the new buyer is \$30.00 (\$14. + \$16.). I then hold the firearm in my business for 15 days per state & Federal laws. After the 15 day wait, I log out from my Federal Acquisition/Disposition book, the firearm to the new buyer.

“EXAMPLE #2:

“This example is a situation where a California resident wishes to purchase a firearm from an out-of-state retailer. Federal laws prohibit interstate transportation of firearms unless thru licensed Federal Firearms Licensed (FFL) dealers.

“The California customer contacts me and states that he/she paid money to an [out] of state dealer and wishes for me to have the firearm shipped to my business address and legally transfer the firearm to him/her. I then send the out-of-state dealer my FFL license; then the out-of-state dealer sends me the firearm (prepaid by customer) along with his FFL license. At this point, upon receipt of the firearm, I log the firearm into my Federal Acquisition/Disposition book. The customer then fills out the State DOJ firearms Dealer Record of Sale (Example #2). I collect the fee of \$30.00 (\$14. state fee plus \$16. store fee). After the 15 day wait, I log out from my Federal Acquisition/Disposition book, and give the firearm to the new buyer.

“The state paperwork in both examples are mailed to the Department of Justice on the day of the transaction along with the \$14. state fee. The firearm is held in my store for 15 days while the state checks to see if the new buyer is eligible to receive the firearm. The 15 day waiting period is a State and Federal requirement before a firearm is given to the buyer.

“The buyer typically will not divulge the price he/she paid for the firearm, as it is not my business in a private party transaction. If I am to collect tax, how do I: confirm, request, or demand the purchase price from the new buyer?

“In order to satisfy the State Board of Equalization, I need to know what sales/use tax I am to collect, if any.”

DISCUSSION

It has been brought to my attention that our letter to you dated July 31, 1995 does not include an analysis of the second paragraph of Revenue and Taxation Code section 6007 as it applies to transfers of firearms through you by out-of-state retailers to California customers. As such, this letter supersedes and replaces our letter to you of July 31, 1995.

As you know, a retailer owes sales tax on its sales of tangible personal property in California, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) A retailer may collect reimbursement for its sales tax liability if its contracts of sale provide for such reimbursement. (Civ. Code § 1656.1.)

When sales tax does not apply, such as when sales take place outside of California, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California, unless such use is specifically exempt from tax by statute. (Rev. & Tax. Code §§ 6201, 6401, Reg. 1620.) Although the purchaser owes the use tax, a retailer engaged in business in this state is required to collect the use tax from the purchaser and pay it to this state. (Rev. & Tax. Code §§ 6202, 6203.) The measure of the sales or use tax is the total amount of the sale, which includes the charge for any services that are part of the sale of tangible personal property. (Rev. & Tax. Code §§ 6011, 6012.)

If you are the retailer of the guns, you owe sales tax on your gross receipts from your sales of the firearms. The fee imposed by the Department of Justice for processing Dealer's Record of Sale of Revolver or Pistol (DROS) forms in accordance with section 12076 of the Penal Code is imposed directly on the firearms dealer. If a dealer chooses to pass that fee on to the purchaser, the fee is includable in that dealer's taxable gross receipts. (Business Taxes Law Guide Annotation 295.1243 (8/30/82).) Therefore, if you are the retailer, the sales tax you owe is measured by the total amount of the sale price of the gun, which includes the Department of Justice fee if passed on to the customer, and which also includes your service charge.

I note that Penal Code section 12082 requires each sale of a firearm to be made through a gun dealer licensed in California pursuant to Penal Code sections 12071 and 12072(d). Penal Code section 12082 permits the seller and the purchaser to complete the sale through a registered dealer, without first having to pass title to the dealer.

Where private parties transfer a firearm in California between themselves, and they do so through you, with you simply registering the firearm without taking title to it at any time, you will not be regarded as the retailer of the firearm. Rather, the private party who sells the firearm is the party making the retail sale. Unless the sale is exempt from tax, the private party seller owes sales tax measured by the total amount of the sale price of the gun, which includes the Department of Justice fee and your service charge, as discussed above.

A different analysis applies where an out-of-state retailer transfers a gun through you to a California purchaser for use in this state. Revenue and Taxation Code section 6007 states, in part:

“When tangible personal property is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner or factor to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the

delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price.”

Business Taxes Law Guide Annotation 495.0790 (8/19/80) explains:

“Agent for Nonregistered Seller. Until an out-of-state retailer with a representative/agent in California registers with the Board as a retailer engaged in business in this state, it may be assumed that the retailer is not engaged in business in this state for purposes of Section 6007. Therefore, all deliveries in this state made by the representative/agent will be assumed to be taxable retail sales by the representative/agent. The representative/agent has the burden of overcoming the assumption by establishing to the satisfaction of the Board that the out-of-state retailer was engaged in business in this state within Section 6203. If the representative/agent satisfactorily overcomes the assumption, the deliveries by the representative/agent will not be considered taxable retail sales even though the out-of-state retailer has not registered with the Board as a retailer engaged in business in this state.

“To overcome the assumption, the representative/agent must establish to the satisfaction of the Board that the out-of-state retailer regularly sells to California consumers and has the tangible personal property delivered by in-state representative/agents. An infrequent sale through an in-state representative/agent will not suffice to overcome the assumption that an unregistered out-of-state retailer is not engaged in business in this state.

“If the representative/agent charges a service fee for completing the required paperwork, which fee the customer must pay to receive the tangible personal property, such fee is subject to tax. When the representative/agent must collect the tax, it should add the fee to the invoice price and collect tax on the total amount. When the out-of-state retailer must collect the tax, it should also collect tax on the invoice price plus the fee, even if the fee is paid directly to the representative/agent by the customer.”

Therefore, when you complete the registration paperwork and deliver a firearm to a California purchaser for an out-of-state retailer not registered with the Board as a retailer engaged in business in this state, it is presumed that you are the retailer of the firearm. In such a case, you would owe sales tax on the total amount of the sales price of the gun, including the Department of Justice fee if passed on to the customer, and including your service charge. You should request a copy of the out-of-state retailer’s invoice so that you will know the amount to which tax applies.

You indicate that your customers often will not divulge to you the prices they have paid for the firearms they purchase. As explained above, if you are the retailer of the firearms, you owe sales tax on your sales of the firearms. If your contracts of sale provide for your customers to reimburse you for your sales tax liability, you have a right under those contracts not only to the actual reimbursement for the sales tax, but also to information you must have in order to

make payment in the correct amount of sales tax to the Board, and in order to charge your customers the correct tax reimbursement amount.

If you establish to the satisfaction of the Board that the out-of-state retailer was engaged in business in this state under section 6203, your deliveries for that retailer will not be considered taxable retail sales made by you, even if the out-of-state retailer has not registered with the Board as a retailer engaged in business in this state. In such cases, as well as in situations in which the retailer is in fact registered as a retailer engaged in business in this state, the out-of-state retailer has the duty to collect the use tax under section 6203. That retailer should collect tax on the invoice price of the firearm, plus your "store" fee, even if the fee is paid directly to you by the customer. Again, the DROS fee passed on to the customer should be included in the measure of tax.

We apologize for any inconvenience our July 31, 1995 letter may have caused. If you failed to collect reimbursement from your customers and failed to pay sales tax to the Board in reasonable reliance on our previous letter when you were otherwise obligated to do so, you will be relieved of liability for that amount of sales tax. As of the date of this letter, you are required to pay sales tax on your retail sales of firearms, as discussed above.

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

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: Mr. Robert Nunes (MIC:40)
Van Nuys District Administrator