


**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
 (PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)  
 TELEPHONE (916) 324-2614  
 FAX (916) 323-3387

JOHAN KLEHS  
 First District, Hayward

DEAN F. ANDAL  
 Second District, Stockton

ERNEST J. DRONENBURG, JR.  
 Third District, San Diego

KATHLEEN CONNELL  
 Controller, Sacramento

JOHN CHIANG  
 Acting Member  
 Fourth District, Los Angeles

E. L. SORENSEN, JR.  
 Executive Director

January 17, 1997

Ms. M--- M---  
 Tax Administrator  
 M--- T--- Corporation  
 P.O. Box XXXXX  
 ---, Washington XXXXX-XXXX

**Re: M--- T--- Corporation  
 Account No. SS -- XX-XXXXXX**

Dear Ms. M---:

This is in response to your letter dated October 22, 1996, in which you request a legal opinion regarding the application of tax to drop shipment transactions. Based on the invoices you have provided for our review, our understanding is that on June 25, 1996 and July 12, 1996, M--- T--- Corporation ("M---") sold merchandise to T--- T---, Inc. ("T---"), a corporation located in Cincinnati, Ohio, and not engaged in business in California. T--- resold that merchandise to C--- M--- located in ---, California, who in turn resold that merchandise to A--- G--- Ins. ("A---") located in --- ---, California, the consumer.

DISCUSSION

A retailer owes sales tax on its sales of tangible personal property in California, measured by gross receipts, unless the sale is 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 retail sale also includes certain drop shipments. (*Id.*) 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. (Rev. & Tax. Code §§ 6201, 6401, Reg. 1620.)

You state that the merchandise in question was shipped by M--- from an out-of-state location directly to A---, the consumer located in California. Title passes from the vendor, and thus the sale occurs, no later than the time at which the vendor completes its performance with respect to physical delivery of the property. This generally occurs upon the seller's delivery of the property to a common carrier for shipment to the customer. (Cal. U. Com. Code § 2401;

Rev. & Tax. Code §§ 6006(a), 6010.5.) Accordingly, in drop shipment sales taking place outside of California, as in this case, the use tax, rather than the sales tax, applies. Although the purchaser is liable for the use tax, a retailer engaged in business in this state is required to collect the use tax from its purchasers and to pay the tax to this state. (Rev. & Tax. Code §§ 6202, 6203.)

The second paragraph of Revenue and Taxation Code section 6007 redefines sales which would otherwise be regarded as sales for resale to be retail sales when a person who is a retailer engaged in business in this state drop ships property, or has property drop shipped, to a California consumer pursuant to a retail sale made by a retailer not engaged in business in California. When the drop shipment comes within the second paragraph of Section 6007, the drop shipper who is a retailer engaged in business in this state is deemed to be the retailer with respect to such sales for purposes of the California Sales and Use Tax Law.

In the present case, our understanding is that the actual sale of the merchandise to the California consumer, A---, was by C--- M---. If C--- M--- is a retailer engaged in business in this state, the second paragraph of section 6007 does not apply and M--- would not have any tax liability resulting from the transaction at issue. Instead, the retail sale is the sale of the merchandise from C--- M--- to A---. Thus, assuming that C--- M--- is a retailer engaged in business in California, C--- M--- must collect the use tax with respect to the drop shipments of the merchandise for use in this state by A---. The measure of tax is the retail sales price charged to the California end-user. We note that since C--- M--- did not provide M--- with a California resale certificate, in order for M--- to avoid being deemed the retailer with respect to the sales at issue under the second paragraph of Section 6007, M--- has the burden of proving that C--- M--- is in fact a retailer engaged in business in California.

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung  
Tax Counsel

SHC:cl

Enclosure (Sales and Use Tax Regulation 1668)  
cc: Out-of-State District Administrator