



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 920 - 7445

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July 5, 1994

BURTON W. OLIVER
Executive Director

X-----

Dear X-----,

This is in response to your letter dated May 5, 1994 in which you ask if certain equipment sales are subject to tax.

The following is a summary of the transaction as we understand it. X----- is a retailer engaged in business in this state with resale inventory warehoused in this state. X----- subsidiary X----- which is located in England and not engaged in business in this state, wishes to buy some equipment from X-----. X----- is purchasing the equipment which it will resell to X-----. X-----, who is not engaged in business in this state is apparently selling the equipment to its parent company, X-----. X----- will drop ship the equipment from its California inventory directly to X----- in California. X-----, a retailer engaged in business in this state, is claiming that it will resell the equipment and will issue a resale certificate to X----- to avoid paying tax or tax reimbursement.

Discussion

A retailer owes sales tax measured by the retailer's gross receipts from the retail sale of tangible personal property in California unless the sale is specifically exempted or excluded from tax by statute. (Rev. & Tax. Code § 6051.) When the sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for use, storage, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401.) A retailer engaged in business in this state must collect the use tax from the purchaser and pay it to this state. (Rev. & Tax. Code §§ 6203, 6204.)

"A 'Retail sale' or 'sale at retail' means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property." (Rev. & Tax. Code § 6007.) In order to prevent evasion of the sales and use tax it is presumed that all gross receipts are subject to the tax and that all property sold by any person for delivery in this state is sold for use in this state, and not for resale, until the contrary is established. (Rev. & Tax. Code §§ 6901, 6241.) This presumption can be rebutted if the retailer takes a timely resale certificate in good faith from the purchaser that the property is being purchased for resale. (Reg. 1668(a) (1).)

The tax treatment with respect to property which is drop shipped is explained in the second paragraph of Revenue and Taxation Code section 6007 which states:

"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."

According to your letter, X----- California retailer, will make a drop shipment to a customer in California pursuant to a sale made by a retailer not engaged in business in this state. Thus, this transaction comes squarely within the second paragraph of section 6007. If the sale to the California customer, X----- is a retail sale, then X----- is deemed the retailer and must report and pay tax based on the retail selling price to the California consumer, X----- . In your letter you state that X----- will issue a resale certificate to X----- . If X----- takes a timely resale certificate from X----- in good faith, it will owe no tax on this transaction. In order for X----- to be regarded as taking the certificate in good faith, it must not have reason to believe that X----- will make any use of the equipment before it resells it.

If we can be of further assistance please do not hesitate to write again.

Very truly yours,

Rachel M. Aragon
Tax Counsel

cc: San Jose District Administrator

May 5, 1994

California State Board of Equalization
Legal Department
Sales and Use Tax Section
P.O. Box 942879
Sacramento, California 94279-0001

Re: X-----

Dear Sir/Madam:

This letter is in response to a request from your office seeking clarification of my letter dated March 22, 1994. I have attached a copy of the original letter.

Our subsidiary X-----, located in England wishes to make sales to X----- in England. Neither is a registered California vendor. The equipment involved is currently in X----- California inventory in Santa Clara. X----- will sell the inventory to X-----, X----- has requested we drop ship this equipment to X----- who is the parent company of X-----, X----- is claiming resale of this equipment and will issue us a resale certificate.

The issue I wish to resolve is whether X----- can exempt these sales to our subsidiary X----- based on the resale certificate from X-----, Also will these sales require X----- to register as a California vendor? If they have to register could they then accept a resale certificate from X----- to exempt the sales made to X----- which are drop shipped from our inventory to X-----, Please respond within the next two weeks if at all possible.

Sincerely,

X-----

March 22, 1994

California State Board of Equalization
P.O. Box 942808
Sacramento, California 94208-001

Re: X-----

Dear Sir/Madam:

I am seeking a determination on the taxability of a transaction and the applicability of the resale exemption involving our subsidiary which is located in England and not registered as a California vendor. Our subsidiary wants to make a sale to a customer who is also located in England and is also not a registered California vendor. The equipment being sold by our subsidiary is currently in our inventory in California and they are requesting that we drop ship this equipment to the customer's parent company who is located in California and a registered vendor.

The customer in England is claiming that their parent company will be reselling the equipment and therefore want to purchase this without California sales tax added. Can we drop ship this equipment for our subsidiary without charging them sales tax? Would this transaction require our subsidiary to register as a California vendor? Can the customer's parent's resale certificate be used to exempt this sale? Please advise as soon as possible on these questions.

Sincerely,

X-----