

Memorandum

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To: Mr. Glenn A. Bystrom
Deputy Director
Sales and Use Tax Department
MIC:43

Date: June 24, 1996

From: Gary J. Jugum
Assistant Chief Counsel

Subject: Tax-Paid Purchases Resold Deductions

By memorandum dated November 15, 1993, a member of our staff advised the San Jose District audit staff that certain limitations applied with respect to the tax-paid purchases resold deduction authorized by Revenue and Taxation Code section 6012, and our Regulation 1701, "Tax-Paid Purchases Resold."

The tax-paid purchases resold deduction is one of two mechanisms recognized in the Sales and Use Tax Law for taxpayer self help. The other is the returned merchandise deduction. In both cases, the taxpayer may recover a tax-related expense by a self-help deduction.

While our analysis of November 1993 tracked the express language of Revenue and Taxation Code section 6012, in fact, we have permitted the taxpayer to take a tax-paid purchases resold deduction, if otherwise appropriate, notwithstanding the fact that the specific property as to which sales tax reimbursement or use tax was paid, was not sold in a taxable retail sale, so long as it was resold without use. The sole criterion we have applied is that taxpayer must have some taxable measure whether sales tax, or self-accrued use tax, or otherwise, against which the deduction may be taken.

We do not permit a net refund.

If the taxpayer is unable to take the tax-paid purchases resold deduction, the amount is subject to refund to the taxpayer's vendor by way of claim of refund by the vendor, if the sale to the taxpayer was treated as a sales tax transaction by the vendor, or by way of claim for refund by the taxpayer, if the taxpayer self reported use tax on the acquisition to the property.

GJJ:sr