

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
916/445-6493

February 2, 1982

Mr. L--- B---, Esq.
Attorney at Law
XXXX --- --- --- Road, Suite X
--- ---, California XXXXX

Dear Mr. B---:

Re: H---, Factory-Build
Housing ("FBH")

Your letter of October 27, 1981 to Mr. Lynn Bjorklund of the Orange County office has been referred to us for response. As we stated in our letter of July 30, 1981, specific questions regarding your unidentified client can be definitively answered only by reference to the contract.

Your first question seeks confirmation that your client will be allowed "to deduct from Total Sales the cost of personal property upon which sales tax was paid, which was incorporated into FBH sold in a transaction subject to sales tax, as a 'tax paid purchase resold'."

Revenue and Taxation Code Section 6012(a)(1) provides that "...a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property."

The general rule, of course, is that "gross receipts" includes the cost of the property sold (6012(a)(1)). The tax paid purchases resold deduction is allowed only in the special circumstances set forth in the statute; that is, generally it is not to be taken when the property has been purchased for the purpose of resale. Regulation 1701, copy enclosed, outlines four situations which warrant use of the procedure.

Your second question concerns whether "there is any mechanism whereby my client can obtain a refund from the Board if it is determined that the cost of personal property upon which tax was paid is greater than Total Sales. Remember, this is theoretically possible given the 60 percent exclusion for FBH, Regulation 1521.4." We assume this question relates to a situation in which, for example, your client purchased property tax-paid from his vendor, then made a retail sale of it subject to the 60 percent exclusion as certificated by the consumer, resulting in more tax reimbursement paid to his vendor than he receives from his customer.

In such case, the client may not obtain a refund from the Board. The reason: The client did not pay tax on cost to the Board; he paid tax reimbursement to his vendor. The vendor, as retailer, is the person who paid the tax to the Board.

Persons who purchase property which they resell or incorporate into property which is resold should issue resale certificates to their vendors and purchase the property without paying tax reimbursement to their vendors. See Regulation 1668, copy enclosed. This is because under Section 6051 the sales tax applies only to retail sellers of tangible personal property. Sales of materials to your client are not retail sales, for the reason that he incorporates the property into his products which he resells.

The refund procedure of Section 6901, et. seq. is restricted to persons who paid the tax. Since your client's vendors paid the tax to the Board, only they may make a claim for refund or receive a refund. Any refund paid to the vendors would be conditioned upon payment to the client by his vendors. The client would be required to request his vendors to file claims for refund.

Note that the greatest amount allowable, if it were determined that the tax paid purchases resold deduction were proper, would be measured by the amount paid to the Board, no the amount paid to the client's vendors. In other words, where the client's tax credit exceeds his tax liability, a credit is allowed only to the extent of the liability under Regulation 1701.

If your client intends to make retail sales, it is therefore in his best interests to obtain a seller's permit and purchase for resale property which he intends to resell or incorporate into property to be resold.

Very truly yours,

Margaret H. Howard
Tax Counsel

MHH:ba
Enc.