

**STATE BOARD OF EQUALIZATION**

(916) 445-6493

May 30, 1986

Mr. G--- D. O--, Purchasing Agent
County
Personnel Department
XXX --- --- Street, Suite ---
---, CA XXXXX-XXXX

County – No Account No.
Local tax allocation – seller’s permit
for county employee

Dear Mr. O---:

In your April 4, 1986 letter to the Board’s legal staff, you write:

I am inquiring as to the possibility of acquiring a re-sale license in my role as Purchasing Agent for the County of ---. My intent is to purchase items required for the operation of the County departments from various vendors outside our County without paying sales tax on the items. I would in turn re-sell the items to the individual County departments charging them the sales tax and remitting those tax receipts to the State. The purpose is to make --- County the point of sale for sales tax purposes.

Is there any reason why this cannot be done?

Opinion

Our opinion is that the Board could not issue a seller’s permit (also commonly referred to as a resale license) under the circumstances you describe. There are two reasons for this result.

First, employees cannot sell tangible personal property to their employers for sales and use tax purposes. For a “sale” to occur, there must be a transfer of title to or possession (lease) of tangible property for a consideration from one person to another. Revenue and Taxation Code Section 6006(a). The County of ---, its departments, and its employees are a single “person” for sales and use tax purposes. Revenue and Taxation Code Section 6005. Thus, for the same reason that tax does not apply when one of the County’s departments transfers tangible personal

property to another department, tax does not apply when an employee transfers tangible property to another employee of the same "person." The possession of a seller's permit would not make an otherwise nontaxable transaction taxable, any more than the lack of a seller's permit by a person actually engaged in business as a seller makes an otherwise taxable transaction nontaxable.

Second, as the California Supreme Court has twice affirmed, the Board has a vital interest in preserving the integrity of the sales tax. Javor v. State Board of Equalization, 12 Cal.3d. 790 at 798; Decorative Carpets, Inc., v. State Board of Equalization, 58 Cal.2d 252 at 255. We believe that vital interest also extends to preserving the integrity of the Bradley-Burns Uniform Local Sales and Use Tax Law, in this case specifically the place of sale requirement established by Revenue and Taxation Code Section 7205, that for local tax allocation purposes, all retail sales are consummated at the place of business of the retailer, not the purchaser, unless there is an out-of-state delivery.

For example, in Business Taxes Law Guide Annotation 700.0200, the legal staff issued an opinion that:

A municipality holding a seller's permit may not use resale certificates in the purchase of property for consumption from out-of-city suppliers and thus be able to report and pay local tax on such property with its annual returns, so that city monies paid for local use taxes would be allocated to the city. Such a use of resale certificates would be improper. 7/9/63.

The Board has also consistently taken the position that counties and cities cannot establish separate legal entities for the sole purpose of allocating local tax to that county or city. The Board must disregard for tax purposes transactions where there is a "sale" in form but not in substance. For example, see Mapo, Inc. v. State Board of Equalization, 53 Cal.App.3d 245.

Please feel free to contact me if you have any questions or comments about this letter.

Very truly yours,

John Abbott
Tax Counsel

JA:hb