



STATE BOARD OF EQUALIZATION

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Executive Director

January 20, 1993

Mr. K--- S. C---
L--- C---
XXXXX --- Drive
---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. C---:

This is in response to your letter dated November 20, 1992 in which you state:

"We are a manufacturer of cosmetic products, which are distributed by independent distributors. We collect sales tax from those distributors who do not have tax exempt certificates with us. To become an independent distributor, one must pay a \$35 membership fee with the application form. There is an annual membership renewal fee."

In your letter you ask the following questions:

"1. Are we collecting the right sales tax if we base it on the retail price, rather than the wholesale price?"

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Only retail sales are taxable. 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.

All gross receipts from sales of tangible personal property are presumed taxable until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a resale certificate. Rev. & Tax. Code section 6091. The resale certificate relieves the seller from sales tax only if taken in good faith from a person who is engaged in the business of selling tangible personal property. Rev. & Tax. Code § 6092. Generally, a retail certificate is not valid unless issued by a purchaser who has a seller's permit. Sales and Use Tax Regulation 1668(b)(1)(C).

Tax is measured by gross receipts which are the total amount of the sale price of the retail sales of retailers, valued in money, whether received in money or otherwise. Rev. & Tax. Code § 6012. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. Civ. Code § 1656.1.

In your case we assume that the independent distributors are purchasing the cosmetics from your business. If so, you may take timely and complete resale certificates from those distributors who have seller's permit. You will not be liable for tax on those sales for which you have received timely, complete, and valid resale certificates. The distributors, however, must pay tax on their retail sales of the cosmetics measured by the total amount of their sales price. The proper use of resale certificates is set forth in Sales and Use Tax Regulation 1668, copy enclosed.

For those independent distributors which do not have seller's permits, you may not accept a resale certificate because they cannot issue valid certificates. Such sales are presumed taxable. If your contract so provides, you may charge such distributors sales tax reimbursement on your sales to them. You must report and pay tax on such sales. The measure of tax is your sales price to the distributors. Please note that such distributors are operating outside of the law by engaging in business as sellers without obtaining a seller's permit. You should advise such distributors to obtain a seller's permit immediately. If such a distributor sells the item, he or she is liable for sales tax on the sale of the item, even though he or she is not registered with the Board.

If your company is not selling the cosmetics to the distributors, i.e., the distributors are taking orders and receiving payment on your company's behalf, your company is making the retail sales and must pay tax on the total sales price.

Revenue and Taxation Code section 6015(b) provides that the Board, for the efficient administration of the sales and use tax laws, may regard any salespersons, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective on whose behalf they are making the sales, and may regard the dealers, distributors, supervisors, or employers as the retailer. Someone from our local Board office will contact you to determine if your company should be treated as a "section 6015 retailer." If so, you will be notified in writing by the Board that your company is a section 6015 retailer. After notification from the Board, your company becomes the retailer of all the sales made by its distributors and must report and pay tax on the sales price charged by the distributors.

"2. Many distributors purchase the products for their own use or give away as gifts or samples. On which basis--wholesale price or retail price--should we collect sales tax for such purchases?"

Sales to distributors who will use the products for their own use or give them away as gifts or samples are retail sales. The measure of tax is the sales price your company charges the distributor. If a distributor issues a valid, timely resale certificate for the sale of an item he or she subsequently uses or gives away and your company does not report tax on the sale, the distributor is liable for use tax measured by his or her purchase price of the product.

"3. The initial membership fee includes a training manual, a product brochure, and a video tape. Should this membership fee be taxed?"

Since a distributor is receiving tangible personal property in exchange for the fee, the fee is subject to tax which must be reported and paid by your company.

"4. The annual membership fee applies to the renewal of the active status of the distributorship; no material is to be given. Should we charge sales tax on the renewal membership fee?"

If no tangible personal property is transferred to the distributor in exchange for the renewal fee, if distributors who pay the fee are not entitled to purchase the products from your company at a lower price than someone who does not pay the fee, and if the renewal fee is \$30 or less, the fee is regarded as a charge for processing the membership renewal and is not taxable. BTLG, Annotation 295.1540. If any of those conditions are not met, however, the renewal fee is taxable.

Very truly yours,

Elizabeth Abreu
Tax Counsel

EA:cl

Enclosure

bc: Compliance Planning
--- District Administrator

L--- C--- appears to be a good candidate for a section 6015 retailer. We spoke with Vic Day in Compliance Planning who agreed to have someone from the --- Office contact the taxpayer.