



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
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November 15, 1994

Mr. W--- -, P--
XXXXX --- Drive, XX-XXX
--- ---, CA XXXXX

Dear Mr. P---:

This is in reply to your September 26, 1994 letter regarding the application of sales tax to charges by an Indian tribe. You asked the following question:

“If a Federally Recognized Indian Tribe owns and operates a business for the purpose of manufacturing items of personal use and, as part of this business, offers these items for retail sale as well as wholesale to both Indians and non-Indians alike, would state sales tax apply to the non-Indian purchasers and by what authority?”

You note you believe Sales and Use Tax Regulation 1616, Federal Areas, applies only to the sale and use of tangible personal property manufactured and purchased off the reservation and sold at retail on the reservation and to purchases made off the reservation by Indians residing on Indian land. You believe that a tribe may manufacture and sell tangible personal property within the boundaries of a reservation and not collect or pay California sales or use tax.

We do not believe an Indian tribe’s liability for collection of use tax on the sale of tangible personal property depends on the tribe’s purchasing the tangible personal property off the reservation. Under Regulation 1616, subdivision (d)(3)(A)2., when an Indian tribe sells tangible personal property on the reservation to non-Indians and Indians who do not reside on the reservation, the tribe is required to register with the State Board of Equalization and collect use tax on the sale of tangible personal property to those purchasers. That is true regardless that the tribe manufactures the property on the reservation.

You asked how a California citizen purchasing tangible personal property in the state of Nevada and returning to California without a California tax obligation compares to a California citizen purchasing tangible personal property produced by an Indian tribe and sold within the boundaries of the tribe's reservation and returning to California.

Under Revenue and Taxation Code section 6201, if a person purchases tangible personal property from a Nevada retailer for use in this state and uses the property in this state, the purchaser is responsible for payment of the California use tax. If the Nevada retailer is engaged in business in this state, the Nevada retailer is required to register with this Board and collect the use tax from the purchaser. (Rev. & Tax. Code §6203.) The term "in this state" is defined at Revenue and Taxation Code section 6017:

“‘In this State’ or ‘In the State’ means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.”

Under Revenue and Taxation Code section 6406, a purchaser liable for California use tax may take a credit for sales or use tax, or reimbursement thereof, paid to another "state, political subdivision thereof, or the District of Columbia prior to the storage, use or other consumption of that property in this state." The credit does not apply to sales or use tax paid to foreign countries or to Indian tribes.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:plh

cc: --- District Office ---