



STATE BOARD OF EQUALIZATION

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Executive Director

March 25, 1997

Mr. J--- O---
M---
XXXX --- Ave., Ste. XXX
---, CA XXXXX

Re: M---, Inc.
Account No. SR -- XX-XXXXXX

Dear Mr. ---:

This is in response to your fax dated November 30, 1996, which was received by the Legal Division on February 28, 1997. You state that M--- purchases and refurbishes used modular office buildings, and then subsequently leases the buildings. You ask whether M--- may properly take a tax-paid purchases resold deduction for its tax-paid purchases of materials such as sheetrock and ceiling tiles which it uses to refurbish the used modular office buildings.

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

Our understanding is that you lease the used modular office buildings as tangible personal property, that is, in connection with the lease of the buildings, you do not install the buildings on your customer's property. A lease of tangible personal property in California is a continuing sale and purchase unless the lessor leases the property in substantially the same form as acquired and timely pays sales tax reimbursement or use tax measured by the purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1, 6010(e)(5), 6010.1; Reg. 1660, subds. (b)(1) and (c)(2).) When a lease is a continuing sale and purchase because either or both of the foregoing conditions have not been satisfied, the lease is subject to use tax measured by rentals payable. (Reg. 1660(c)(1).) The lessee owes the tax, which the lessor is required to collect from the lessee and pay to this board. (Rev. & Tax. Code §§ 6202, 6203, 6204; Reg. 1660(c)(1).)

We assume that you are leasing tangible personal property in transactions which are continuing sales and purchases, subject to use tax measured by rentals payable. Under these circumstances, if you purchase materials for the purpose of incorporating it into the modular office buildings to be leased, that is, the materials become a component part of the modular office buildings, you may purchase such materials extax for resale. (Reg. 1525.) In contrast, tax applies to your purchase of tangible personal property for the purpose of using it in refurbishing the used modular office buildings and not for the purpose of physically incorporating it into the buildings.

With regard to the tax-paid purchases resold deduction, Sales and Use Tax Regulation 1701 (copy enclosed) provides that a retailer who resells tangible personal property before making any use thereof (other than retention, demonstration or display while holding it for sale in the regular course of business) may take a deduction of the purchase price of the property if, with respect to its purchase, the retailer has reimbursed its vendor for the sales tax or has paid the use tax. Thus, if you have, through error, paid sales tax reimbursement with respect to the purchase price of property purchased for resale in the regular course of business, you may take a tax-paid purchases resold deduction. The deduction must be taken on the return in which your lease of the modular office buildings is included. If the deduction is not taken in the proper quarter, a claim for refund must be filed.

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung
Tax Counsel

SHC:rz

Enclosure: Sales and Use Tax Regulation 1701

cc: Oakland District Administrator (CH)