

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

September 29, 1988

Ms. L--- G---
Tax Coordinator
I---, Inc.
P. O. Box XXXX
---, NE XXXXX

Re: SC -- XX-XXXXXX

Dear Ms. G---:

This is in response to your letter dated August 24, 1988 regarding the application of tax to two sales by I---.

The first transaction was a sale of equipment to C---. The equipment was shipped by common carrier from outside California to C--- in Davis, California. C--- was invoiced for this purchase on March 25, 1988. I--- received a letter dated July 12, 1988 from M--- L--- C--- stating that it had purchased the equipment I--- sold to C--- pursuant to an agreement dated April 28, 188. M--- noted that the transaction was a sale leaseback whereby M--- leased the equipment back to C---, collecting use tax measured by the rentals payable. M--- also sent I--- an exemption certificate which states that the property was purchased from I--- "exclusively for the purpose of leasing."

Since the sale from I--- to C--- occurred outside California and the property was thereafter shipped by common carrier into California, if the sale was at retail the applicable tax is a use tax on C--- which I--- must collect and pay to the state. (Rev. & Tax. Code § 6201 et seq., Reg. 1620.) A sale at retail is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) It is presumed that property sold for delivery in this state is sold at retail until the contrary is established, and the burden of proving the contrary is upon the seller unless it takes from the purchaser in good faith a timely resale certificate. (Rev. & Tax. Code § 6241, Reg. 1668.) A resale certificate is timely if taken before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. (Reg. 1668(a)(1).)

I--- did not take a timely resale certificate from the purchaser of the property. The property was sold to C---. The property was delivered to C--- and C--- was billed for the property in March, 1988. The exemption certificate supplied by M--- is dated July 12, 1988, which I assume is well beyond I---'s normal billing and payment cycle. Furthermore, the certificate supplied by M--- is not a valid resale certificate. Regulation 1668(b)(1) provides that a document will be regarded as a valid resale certificate only if it contains all of the following essential elements:

“(A) The signature of the purchaser or an agent or employee of the purchaser.

“(B) The name and address of the purchaser.

“(C) The number of the seller's permit held by the purchaser, or if the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, an appropriate notation to that effect in lieu of a seller's permit number.

“(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase ‘for resale’. The use of phrases such as ‘non-taxable’, ‘exempt’, or similar terminology is not acceptable.

“(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)”

As noted above, the property was purchased from I--- by C--- and the certificate provided by M--- therefore does not satisfy the first three elements set forth above. Furthermore, the document does not indicate that the property was purchased for resale. The notation that the property was purchased exclusively for the purpose of leasing is not sufficient. Since I--- did not take a timely and valid resale certificate from its purchaser, it must establish the sale was not at retail or it is liable for the use tax it was required to collect. We do not have sufficient information to determine whether I--- can satisfy its burden of establishing that its sale was not at retail. We note, however, that I--- shipped the property on March 24, 1988, and the agreement by which M--- purchased that property from C--- is dated April 28, 1988. If C--- used the property during this period, I---'s sale to C--- was at retail and subject to use tax.

The second transaction about which you inquire involves a sale by I--- of equipment to M--- N--- L--- C--- [MNC], in care of [name] Corporation. The equipment was shipped to [name] and you were furnished with a document that states:

“[name] Corporation is engaged in a sale and Lease-back program and is exempt for California Sales Tax on specified equipment. This applies to P.O.’s with Letter LE on them.

CA Exemption # SR -- XX-XXXXXX.”

The property was shipped on March 17, 1988. The invoice dated March 18, 1988 indicates that the property was sold to M--- N--- L--- C--- in care of [name]. As discussed above, since I---’s sale is to M--- N--- L--- C---, a valid resale certificate would have to come from that purchaser. The document supplied to I--- does not satisfy any of the five essential elements of a valid resale certificate. I--- therefore owes the use tax it was required to collect on the transaction unless it establishes that its sale was for resale. We again do not have sufficient information to determine whether I--- can satisfy this burden. We note, however, that since the sale was made to M--- N--- L--- C---, this indicates that the transaction may not have been a sale by I--- to [name] for sale to and leaseback from M--- N--- L--- C---. Rather, it indicates that the transaction was a sale from I--- to M--- N--- L--- C--- for lease to [name]. If this is the case, this supports the conclusion that the sale by I--- was for resale since I--- did not collect use tax measured by purchase price and it is probable that M--- N--- L--- C--- made no use of the property prior to its lease (sale) to [name]. (See Reg. 1660.) If I--- can establish these facts, it will not owe use tax on its sale to M--- N--- L--- C---.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

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