

M e m o r a n d u m**475.0045**

To: Mr. Glenn Bystrom

Date: September 24, 1986

From: Gary J. Jugum

Subject: Resale Certificates

This is to confirm our advice to you of September 24, 1986, in regard to the application of Revenue and Taxation Code section 6244.

A question has arisen as to whether use tax may be asserted against a purchaser who does not hold a valid California seller's permit but who has issued a resale certificate to his vendor which is regular on its face. By "regular on its face" we mean that the resale certificate contains the five elements described in paragraph (b) of Regulation 1668, except that one (particularly the permit number) or more (in some cases, the name of the purchaser) are false. The permit number may be invalid because the permit may have been closed out since the resale certificate was issued, or the purchaser may have changed its business form (incorporated) since the certificate was issued to the seller, or the number may be wholly fictitious. The name of the purchaser may be incorrect because an employee, acting for his own account, may be utilizing the permit of his employer, or the number may otherwise be "borrowed". In cases of the type in question, we are of the opinion that use tax may be asserted against the purchaser pursuant to Revenue and Taxation Code section 6244. The theory for imposition is either that the property was purchased "for the purpose of resale" or that the property was purchased under a resale certificate, the technical validity of which the purchaser would be estopped to deny.

We are further of the view that in the specific cases under consideration it would be improper to issue a determination to the seller. In these cases a dual determination would be inappropriate. Sales and Use Tax Law provides that either a sales or use tax applies to each sale-consumption transaction, but not both. See Rev. & Tax Code section 6390. Our conclusion with respect to the liability of the seller is, of course, limited to the circumstance where the resale certificate was taken by the seller in good faith.

GJJ:sr



cc: Mr. Donald J. Hennessy
Mr. William E. Burkett
Mr E. Leslie Sorensen, Jr.