

**STATE BOARD OF EQUALIZATION**

(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 94279)

April 9, 1971

Y--- and E--- F---
Dba B--- A--- F---
XXXXX --- ---,
Suite XXX
---, CA XXXXX

RE: SR -- XX-XXXXXX

Dear Mr. and Mrs. F---:

This is in response to your petition for redetermination of the determination issued as a result of an audit dated October 15, 1970 covering the period July 1, 1967 to June 30, 1970.

The sole item protested is the inclusion in the additional measure of tax of the sale of four horses to Mr. D--- F---, dba S--- A---, in the amount of \$14,000. It is your contention that the sale constitutes a sale for resale.

We understand that upon execution of the sales agreement dated December 31, 1969, entered into between B--- A--- F--- as Seller and D--- F--- as buyer, Mr. F--- provided a seller's permit number as indicating that the horses were being purchased for resale. The number was inserted in the sales agreement under section (2)(G) which provides, "Buyer states he has a tax resale number, SR -- XX-XXXXXX. It is understood by the parties hereto that if said number is disallowed by the State Board of Equalization, then buyer agrees to add 5% sales tax to this transaction".

The permit number provided by Mr. F--- was the number issued to E--- C--- Leasecorp, a corporation of which Mr. F--- is president. The above entity is a distinct and separate entity apart from the entity (Mr. D--- F---, dba S--- A---) which purchased the horses.

Mr. F--- did not issue a resale certificate in accordance with the requirements of or in the form prescribed by the enclosed regulation 1668, and none has been presented to support the claimed exempt status of the sale.

We cannot agree with your contention that the sale constitutes an exempt sale for resale.

At the time Mr. F--- purchased the horses, he had a seller's permit for the entity for which the horses were purchased. It was known at the time of the sale that the horses were not to be resold in the course of business by the entity to which the seller's permit number, inserted in the sales agreement, was issued. The holder of that permit number is a different legal entity from the entity purchasing the horses and is not a party to the transaction. The use of that number, in lieu of the issuance of a valid resale certificate by the purchasing entity does not afford a legal basis for exempting the sale of the horses from the tax as a sale for resale.

The protested sale occurred in December 1969 and while Mr. F--- has stated to you that a seller's permit would be obtained for the business conducted by him under the dba S--- A---, as of the present time the board has no record of a permit having been issued to such business activity.

Furthermore, the sales agreement under section (2)(H) contemplates that at least one of the mares is being purchased for breeding purposes rather than for resale.

In view of the above and in the absence of a valid resale certificate taken from the purchaser in good faith the sale of the horses to Mr. F---, dba S--- A---, cannot be allowed as an exempt sale for resale.

We will recommend that the determination be redetermined without adjustment.

Your petition does not request a hearing. If after review of our recommendation and the reasons therefor you wish a hearing, please notify Mr. J. L. Martin, Petition Unit, P.O. Box 1799, Sacramento, CA 95808, within 20 days. Otherwise our recommendation will be presented to the board for final action of which you will be notified.

Very truly yours,

Joseph Manarolla
Tax Counsel

JM:smb
Enclosure