



STATE BOARD OF EQUALIZATION

LEGAL DIVISION - MIC: 82
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 327-2291
FAX (916) 323-3387

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Executive Director

April 7, 1995

X-----

Re: X-----

Dear X-----,

This is in response to your letter dated December 15, 1994 and received by us on January 12, 1995 regarding the application of tax to your sales of furniture.

You state: "My company is a Texas based retailer with no offices or personnel in the State of California. We have a customer with a corporate office in Texas that has requested that we sell them office furniture and have it shipped to a destination in California. The manufacturer is based in Michigan, but has offices in California. We have requested that they drop ship [the] product from their Michigan factory into California and bill us in Texas."

You then ask:

"1) Is it necessary for the Michigan manufacturer to charge us sales tax in Texas if we do not possess a California resale certificate?

"2) If the answer to my first question is yes, and if the customer informs us that due to the fact that we did not charge them California sales tax that they remitted the use tax in the normal course of business, can the Michigan manufacturer accept a letter from us or the end user that the tax was paid directly to the State of California? And if a letter is acceptable, what information must it contain?

3) If the answer to my first question is yes, would you please send the appropriate forms to my attention to register as a California reseller so that future orders, if any, can be handled properly."

In answering your questions, it is best for me to begin with a general discussion of California Sales and Use Tax Law. Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, such as when sales take place outside of California, the use tax, measured by the sales price of the property sold, applies

to the use of property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401, Reg. 1620.)

Title passes from the vendor, and thus the sale occurs, no later than the time at which the vendor completes its performance with respect to physical delivery of the property. This generally occurs upon the seller's delivery of the property to a common carrier for shipment to the customer. (Cal. U. Com. Code § 2401; Rev. & Tax. Code §§ 6006(a), 6010.5.) Since the sales you describe take place outside of California, the use tax, rather than the sales tax, applies. Although the purchaser is liable for the use tax, a retailer engaged in business in this state is required to collect the use tax from the purchaser and pay it to this state. (See Rev. & Tax. Code §§ 6202, 6203.)

“Retailer engaged in business in this state” includes any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business. (Rev. & Tax. Code § 6203(a).)

“Retailer engaged in business in this state” also includes any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property. (Rev. & Tax. Code § 6203(b).)

You state that your company has no offices or personnel in California. Please note that it is not necessary for a person to be your employee in order for us to regard that person as your representative, agent, salesperson, canvasser, independent contractor, or solicitor as those terms are used in subdivision (b) of Revenue and Taxation Code section 6203. If you are not a retailer engaged in business in this state pursuant to any of the subdivisions of section 6203, your California purchasers are liable for the use tax, but you are not required to collect that tax from them. Of course, you may voluntarily register to collect the use tax from your California purchasers. Regulation 1684(b), a copy of which is enclosed, explains that a retailer not engaged in business in this state may apply for a "Certificate of Registration--Use Tax." Holders of such certificates are required to collect tax from their purchasers, give receipts for the tax, and pay the tax to the Board in the same manner as that required of retailers engaged in business in this state. For more information on voluntary registration, please call our Out-of-State District office at (916) 322-2010.

You indicate that the Michigan manufacturer is engaged in business in California. If such is the case and if you are not currently engaged in business in this state pursuant to section 6203, the second paragraph of Revenue and Taxation Code section 6007 applies to the manufacturer's deliveries to your customers. That paragraph redefines a sale which would otherwise be regarded as a sale for resale to be a retail sale when a person who is a retailer engaged in business in this state drop ships property, or has property drop shipped, to a California consumer pursuant to a retail sale made by a retailer not engaged in business in California. Under section 6007, the Michigan manufacturer of the furniture is deemed to be the retailer of the furniture for purposes of the California Sales and Use Tax Law, and it is required to collect the applicable use tax from

its California purchasers and pay that tax to this state. The measure of tax is the retail sales price, which is the marked-up price charged to the California end-user.

On the other hand, if you were to voluntarily register to collect the use tax or if you were otherwise engaged in business in this state as defined in section 6203, you would be able to provide the Michigan manufacturer with a California resale certificate. Regulation 1668, a copy of which is enclosed, explains the information such a resale certificate must contain. If the manufacturer were to accept in good faith a valid and timely California resale certificate containing your valid California seller's permit number, the manufacturer would not be liable for collection of the use tax. As a retailer engaged in business in this state, you would be responsible for collecting the use tax from your California purchasers and paying that tax to this state. Please note that a resale certificate that does not contain the purchaser's valid California seller's permit number will not relieve a seller of liability under the second paragraph of section 6007.

Of course, if the California customer has already paid use tax to California, the Michigan manufacturer does not have to pay the tax again. Nevertheless, a vendor such as the Michigan manufacturer that is deemed to be the retailer is liable for collection and payment of the tax unless and until it establishes that the tax was actually paid to California.

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

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

Enclosures (2)

cc: Out-of-State District Administrator