



**STATE BOARD OF EQUALIZATION**

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September 27, 2000

Mr. S--- R---  
Manager, State Tax Consulting  
P--- LLP  
XXX --- ---  
---, California XXXXX

Re: Unidentified Taxpayer

Dear Mr. R---:

I am responding to your letter addressed to Acting Assistant Chief Counsel David Levine, dated July 12, 2000 in which you request a legal opinion on behalf of an unnamed client and acknowledge that Revenue and Taxation Code section 6956 does not apply to this letter. As you know, you must provide us with the identity of your client and all relevant facts if you wish an opinion letter coming within the provisions of section 6596.

You state:

“Our client is registered with the Board, but is located outside California. It receives an order to make a sale of tangible personal property for the purposes of resale in the regular course of business. The purchaser is located solely outside California, is not a retailer engaged in business in California, and is not registered with the Board. That purchaser indicates to our client that the products will be sold to a consumer. The agreement between our client and the purchaser is that the purchaser will have a common carrier, hired and paid solely by the purchaser, pick up the products on a will-call basis from our client’s out of state location for delivery to the consumer. Our client is never told of and never learns of the name or address of the consumer. Both our client’s sales invoice and the purchaser’s purchase order indicate that title will pass at our client’s out-of-state location, as well as that the sale is made on a will-call basis including in all spaces for ‘shipment’ and/or ‘delivery’.

The carrier's bill of lading will not identify our client, and will show only the purchaser or the carrier as the consignor.

“Will our client need to collect and remit to the Board any California use tax when the consumer is located in California?”

Discussion:

For the reasons described below, your client must collect and remit use tax to the Board when the consumer is located in California.

The transaction you describe is a drop shipment. A drop shipment generally involves three persons and two sales. The three persons are the true retailer, the drop shipper and the consumer. The two sales are the true retailer's contract to sell property to the consumer and the true retailer's contract with the drop shipper to purchase the property and to have the drop shipper deliver the property pursuant to the true retailer's instructions. When the true retailer is not engaged in business in this state and the drop shipper is, the drop shipper's delivery of property to the California consumer or to a person for redelivery to the California consumer is deemed a “retail sale,” which is described in the second paragraph of Revenue and Taxation Code section 6007, as follows:

“When tangible personal property is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner or factor to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price.

The drop shipment rule imposes sale tax or use tax collection liability on the drop shipper. The purpose of this drop shipment rule, as recently explained in *Lyon Metal Products, Inc. v. State Bd. Of Equalization* (1997) Cal.App.4<sup>th</sup> 906 which upheld the provisions of section 6007 against constitutional challenge, is to provide a mechanism for assuring that goods sold to California users by non-California sellers are taxed in the same manner as those sold within the state.

Your client is a retailer who made retail sales, as so defined, when it delivered tangible personal property to its loading dock pursuant to instructions of its out-of-California customer (true retailer) for pick up by common carrier hired by the out-of-California customer for subsequent redelivery to consumers in California. The sale to the consumer occurred when your client completed its obligations with respect to delivery of the tangible personal property. (Rev. & Tax. Code § 6010.5, Reg. 1628, Com. Code § 2401.) It is your client's delivery for redelivery on behalf of a retailer not engaged in business in California which makes your client the retailer, in accordance with the provisions of Revenue and Taxation Code section 6007, who is thereby obligated to collect use tax (since the sale is made outside California to a California consumer by a

person engaged in business in California) measured by the retail selling price<sup>1</sup> and remit it to the Board.

The transactions you describe are similar to those in *Lyon*, supra, in which a wholesaler engaged in business in California shipped goods from its warehouse, on request, to the California customers of an out-of-California retailer who had bought the goods from the wholesaler and sold them to its customers. Although the facts in *Lyon* are that the wholesaler/drop shipper shipped the goods to the consumer, while here your client is delivering them to a common carrier for redelivery to the consumer, the statute does not distinguish between the types of deliveries. There is no indication that delivery as used in the statute excludes delivery by depositing property for transport or that the Legislature intended to include only the drop shipper's delivery by manual transfer and to exclude the drop shipper's deliveries by common carrier. In fact, a recent unpublished decision of the California Court of Appeals upheld the Board's position imposing tax on a situation similar to that described in your letter, imposing tax on a drop shipper who placed products on its loading dock for pick up by common carriers engaged by the out-of-California customer, who took possession of the products, with title then transferring to those customers. Your client's noninvolvement with the ultimate redeliveries by common carrier other than making the delivery to enable the redeliveries does not exclude it from the reach of the statute that covers delivery for redelivery to a consumer.

In the transaction you describe, Revenue and Taxation Code section 6007 defines your client as the retailer making retail sales when the delivery is to a California consumer. The fact that your client does not take steps to ascertain whether the consumer is located in California and its purchase thereby subject to use tax which your client is obligated to collect (Rev. & Tax. Code § 6203) and which is a debt your client owes this state (Rev. & Tax. Code § 6204) will not relieve it from tax.

If you have any further questions on the matter, feel free to write again.

Very truly yours,

Janice L. Thurston  
Senior Tax Counsel

JLT/cmm

cc: --- District Administrator (---)  
--- District Administrator (---)

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<sup>1</sup> As you know, the Board is proposing to adopt Regulation 1706 to provide a method for the drop shipper to calculate the retail selling price.