M e m o r a n d u m

570.1673

To: Return Review
A. L. Giorgi

Date: May 29, 1986

From: Legal
Robert J. Stipe

Subject: V--- L---, Mr. J. F. B---
XXX E. --- Avenue
---, CA XXXXX
Account No. SR -- XX-XXXXXX

This is in response to your March 28, 1986 request for an opinion concerning the amount of Mr. J. F. B---, owner of V--- L--- in ---, California.

Mr. B--- wanted to purchase two AT&T 6300 computers. He was unable to locate any near Lompoc. Mr. B---'s brother, C---, who lives in Louisiana, offered to purchase the computers for Mr. B--- through the company for which C--- worked.

Mr. B--- sent C--- a check for the two computers. The check was made out to C--- R. B---. C--- purchased on computer in his name with a check drawn from his own account. A complication arose when AT&T would not sell C--- a second computer. Therefore, C--- had a friend, Mr. J--- S---, purchase the second computer in S---'s name. C--- wrote a check from his account to Mr. S--- to cover the amount of the purchase. In both cases the purchases were not made as sales for resale so sales tax was paid when the computers were bought. C--- shipped both computers to Mr. B--- in California.

Mr. B--- deducted the amount of the out-of-state sales taxes paid on the purchase of the two computers on his sales and use tax return. Mr. B--- claims that the two computers were purchased with his money by his brother and Mr. S--- acting as his agents.

You ask our opinion as to whether the manner in which the two computers were purchased allows Mr. B--- to take credit for the sales taxes paid to the other state jurisdiction.

Revenue and Taxation Code section 6406, in pertinent part, provides that "[a] credit shall be allowed against…the taxes imposed on any person…by reason of the storage, use or other consumption of tangible personal property in this state to the extent that the person has paid a retail sales or use tax…imposed with respect to that property by any other state…." (Emphasis added).

California Civil Code section 2295 defines an agent as one who represents another, called the principal, in dealings with third persons. Accordingly, we are of the opinion that to establish that a particular acquisition was made by an agent for the principal the agent must clearly disclose to the supplier the name of the client for whom the agent is acting. In addition, the agent must obtain, prior to the acquisition, and retain written evidence of the agent status with the principal. Lastly, the price billed to the principal, exclusive of any agency fee, must be the same as the amount paid to the supplier. (See Sales and Use Tax Regulation 1540(a)(2)(A) for example of agency relationship.)

Applying the above criteria, we are of the opinion that Mr. B--- could not take a credit for sales taxes paid to another state pursuant to section 6406 unless he personally paid the tax or his agent(s) acting in his behalf paid the tax.

Mr. B--- acknowledges that he personally did not purchase nor pay the sales tax on the purchase of the two computers. Instead, Mr. B--- contends that the computers were purchased by his "agents" (C--- B--- and J--- S---). The facts, as described, however do not support this contention since the "agents" did not obtain nor retain written evidence of the agency relationship nor did the "agents" disclose the existence of an agency relationship to the supplier when they purchased the computers. Therefore, Mr. B---'s claim that his brother and Mr. S--- were acting as his "agents" must be denied.

Accordingly, since neither Mr. B--- nor his "agents" have paid sales tax to another state jurisdiction, Mr. B--- cannot take the credit described in section 6406.

RJS:sr