115.0015

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-3723

January 27, 1987

Mr. REDACTED TEXT
Law Offices of
REDACTED TEXT

Re: REDACTED TEXT Inc.
SS OHB REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in response to your letter of November 4, 1986. We are also in receipt of your letter of January 20, 1987.

We remain of the opinion, stated in Mr. John B. Adamo's letter of January 13, 1986, to Ms. REDACTED TEXT, that your client, REDACTED TEXT Inc. ("REDACTED TEXT") is required to collect California use tax with respect to certain auction sales it makes in New York to California residents where the property is shipped to such residents in California by your client by a common carrier.

You indicate that although physical delivery of the property sold to the customer is not affected in New York, REDACTED TEXT makes no commitment to its buyers at the time of such sales to ship the property at the buyer's instructions either by way of posted sign, catalog, brochure or other written agreement.

We believe the fact that REDACTED TEXT ships the property to California is sufficient to support the use tax collection obligation imposed by Revenue and Taxation Code section 6203 upon retailers engaged in business in this state. That section provides that every retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state shall, at the time of making the sales or, if the storage, use or other consumption of tangible personal property is not then taxable, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser.

You are aware of Business Taxes Law Guide Annotation 325.0980, and we have been concerned with situations where auction sales take place in California, with a subsequent shipment of the goods to a point outside this state. We have concluded that the annotation is not applicable in the use tax collection circumstance and that the question as to whether a sale originating in California does or does not qualify for exemption as a sale in interstate commerce is subject to analysis independent of that appropriate with respect to section 6203.

A sale originating in California does not qualify as a sale in interstate commerce where there is a delivery of the goods to the purchaser in this state and a redelivery of the goods to the seller for shipment outside this state. It is possible that New York State could impose a sales tax on the transactions in question, on the grounds that the sales do not qualify as sales in interstate commerce. It is our opinion that your client would nevertheless be required to collect California use tax, subject to the right of credit provided by Revenue and Taxation Code section 6406.

The circumstance which justifies relief from the use tax collection obligation is the circumstance identified by the court in Montgomery Ward & Co. v. State Board of Equalization, (1969) 272 Cal.App.2d 726, cert. denied, 369 U.S. 1040. The court there held that a retailer otherwise qualifying as a retailer engaged in business in this state was not required to collect California use tax on over-the-counter credit sales made to California residents. The case considered by the court in Montgomery Ward may be distinguished from the case in which the seller itself ships the property into this state.

We have taken steps to insure that all persons similarly situated are subject to the same use tax collection obligation.

In response to you request of January 20, we would be happy to meet with you and Ms. REDACTED TEXT on Friday, March 6, 1987, at 10:00 in our office, Room 288, 1020 N Street, Sacramento.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

bc: Mr. Robert Nunes
Mr. Glenn Bystrom