



STATE BOARD OF EQUALIZATION

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Executive Director

October 21, 1996

Mr. J--- v--- B---
P---C---
XXX --- Drive
---, -- XXXXX

Re: Seller's Permit No. SY - XX-XXXXXX

Dear Mr. v--- B---:

This is in response to your letter dated August 12, 1996 regarding the application of Regulation 1616 to sales by P---C---, where property is delivered on a reservation to an Indian purchaser that does not reside on a reservation. You point out that there is no explicit "residency" requirement in Regulation 1616(d)(4). You believe such a requirement can be assumed by the mention of the requirement in other sections of the Regulation.

We agree with your conclusion. The provisions in Regulation 1616 regarding sales by and to Indians was intended to be read as a whole. A sale *by an Indian to an Indian* is subject to use tax, even if the property is delivered on a reservation, if the purchaser does not reside on a reservation. (Reg. 1616(d)(3)(A)2.) The fact that the sale is made by an Indian on a reservation exempts the selling Indian from sales tax; however, the liability of the purchaser for tax is dependent on whether or not the purchaser resides on a reservation. Similarly, a sale by a non-Indian is exempt from sales tax when the sale is made on a reservation to an Indian who resides on a reservation, but such sale is subject to sales or use tax if the purchaser does not reside on a reservation, even if the purchaser is an Indian. (Reg. 1616(d)(3)(B)2.)

The same basic rules discussed above apply when the seller is an "off-reservation" retailer. If the sale occurs on the reservation (i.e. title to the property passes to the Indian purchaser on the reservation), the sale is exempt from sales tax. (Reg. 1616(d)(4)(A).) The use of such property by an Indian purchaser who resides on a reservation is also exempt from use tax if the property is used on the reservation more than off the reservation during the first 12 months following the sale. (Reg. 1616(d)(4)(E).) However, if the off-reservation retailer transfers title to the property to an Indian purchaser on a reservation, but that Indian purchaser does not reside on a reservation, then the transaction is subject to use tax. Any other conclusion would result in the anomalous situation that tax is imposed in a transaction negotiated and completed on a reservation between an Indian seller and an Indian purchaser, while no tax is imposed when the seller is a non-Indian off-reservation retailer and the transaction is negotiated off a reservation.

Such an anomalous result is not required by federal law. Since Regulation 1616 was intended to explain the exemptions from sales and use tax which are *required* by federal law, it cannot be interpreted to grant an exemption to a less protected transaction than to a transaction involving only Indians on a reservation.

We therefore conclude that sales of property by an off-reservation retailer negotiated off a reservation, but with the sale occurring to an Indian on a reservation, is exempt from tax *if the Indian resides on a reservation*, unless the purchaser uses the property off the reservation more than one-half the first 12 months after the purchase. We conclude that sales of property by an off-reservation retailer negotiated off a reservation, but with the sale to an Indian occurring on a reservation, is subject to tax if the Indian purchaser does not reside on a reservation.

Please write again if you have further questions.

Very truly yours,

Charlotte Chyr
Tax Counsel

CC:cl

cc: Mr. Dennis Fox (MIC:92)
--- District Administrator
--- District Administrator
--- --- District Administrator
Mr. J--- B---