

**STATE BOARD OF EQUALIZATION**

916-445-5550

December 18, 1986

REDACTED TEXT

Dear REDACTED TEXT:

Your letter dated October 21, 1986 to the Franchise Tax Board has been referred to me on behalf of the legal staff of the Board of Equalization, which administers the California Sales and Use Tax. In your letter, you state:

“The REDACTED TEXT has their main office in REDACTED TEXT, California. They also operate branches throughout the Far East. One such branch is in REDACTED TEXT, Japan. Their mailing is done through an APO San Francisco 96343 address. This is a military postal address and the organizations/individuals using the address are not physically located in the State of California.

“...If a customer of REDACTED TEXT orders imprinted checks, he sends his order through REDACTED TEXT. REDACTED TEXT then sends the order to the check printer who mails the new checks to the customer and debits the account of REDACTED TEXT. REDACTED TEXT in turn debits the customer’s account. The problem is that REDACTED TEXT has been assessing the California sales tax to customers outside the State of California because the check printer has charged REDACTED TEXT’s account.”

Sales Tax is imposed on retailers on their sale at retail in this state of tangible personal property, unless the sale is otherwise excluded or exempted from taxation by statute. (Rev. & Tax. Code § 6051.) A “sale at retail” is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code §6007.)

A retailer making a sale at retail may collect reimbursement for his sales tax liability from his customer if he does so in conformity with Civil Code Section 1656.1. This “sales tax reimbursement” is the charge made by the printer and then taken by REDACTED TEXT.

There are two discrete transactions set forth by your letter. One transaction is a sale of checks by the printer to REDACTED TEXT for resale in the regular course of REDACTED TEXT’s business. This is shown by the printer’s treatment of the transaction – he obtains the order and payment for that order from REDACTED TEXT. The other transaction is a sale at retail by REDACTED TEXT to its customers. This is shown by REDACTED TEXT’s treatment of the transaction – it obtains the order and payment for that order from its customers. Although the printer mails the checks to REDACTED TEXT’s customers, he does so on REDACTED TEXT’s behalf. (See, e.g., Business Taxes Law Guide Anno. 495.0980 (8/25/58).)

Since the first transaction, the sale of the checks by the printer to REDACTED TEXT, is for resale and not at retail, the transaction is not subject to sales tax. The printer, therefore, must not charge REDACTED TEXT sales tax reimbursement.

I assume that REDACTED TEXT is a federal credit union organized pursuant to the Federal Credit Union Act, 12 U.S.C. section 1751 et seq. As a federal credit union, REDACTED TEXT is exempt from all state taxes except certain taxes not relevant here. (12 U.S.C. §1768; Rev. & Tax. Code §6402; United States v. State of Maine (D. Maine 1981) 524 F.Supp.1056, 1058-59.)

In summary, the sale of checks by the printer to REDACTED TEXT is a sale for resale not subject to California sales tax. The retail sale of checks by REDACTED TEXT is not subject to California sales or use tax because REDACTED TEXT is a federal credit union. (We also note that, under the facts set forth in your letter, were REDACTED TEXT not a federal credit union, the subject sales would be exempt from sales tax as a sale in foreign commerce. (Sales and Use Tax Regulation 1620(a)(3).))

You ask how the matter should be handled so that the printer does not collect sales tax. Since the printer is selling the checks to REDACTED TEXT for resale, REDACTED TEXT should issue the printer resale certificates as explain in Regulation 1668, a copy of which is enclosed. In the location on the certificate for a seller's permit number, REDACTED TEXT should make a notation that, as a federal credit union, it makes no sales in this state subject to sales or use tax. These certificates should rectify the situation. If not, please give the printer a copy of this letter, which he should consider as instructions to accept resale certificates from REDACTED TEXT in lieu of collecting sales tax reimbursement.

The facts set forth in your letter also raise an additional matter of "excess tax reimbursement," which is the collecting of sales tax reimbursement when no sales tax is due. The printer collected excess tax reimbursement from REDACTED TEXT because the sales were not subject to tax. If the printer has paid these funds to this board, he may request a refund in letter form addressed to Audit Review and Refund, P.O. Box 942879, Sacramento, CA 94279-0001. The refund will be conditioned on return of such funds to REDACTED TEXT for refund to its customers.

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

Sincerely,

David H. Levine
Tax Counsel

DHL:jb
Enclosure