



175.0160

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

October 15, 1969

REDACTED TEXT

Attention: REDACTED TEXT
 Credit Manager

Gentlemen:

This is in reply to your letter of October 6, 1969, in which you ask us to interpret the statement in our letter to you of August 11, 1969, that, "...states other than the State of California are not subject to California's sales and use tax...."

As you know, the California sales tax is a tax imposed upon the retailer (seller) of tangible personal property [Rev. & Tax. Code, § 6051]. The California use tax is a tax imposed upon persons storing, using, or otherwise consuming in this state tangible personal property purchased for use in this state from a retailer. [§ 6201.] Only "retailers," who are defined as certain kinds of "sellers" (see § 6015), who are in turn defined as certain kinds of "persons" (see § 6014), are required to pay the (sales) tax imposed by section 6051. Only "persons" are required to pay the (use) tax imposed by section 6201.

As you are now aware, the term "person" is defined in section 6005. The definition does not specifically include "states of the United States" ("this state" is included, however). Administratively, we have determined that the phrase "any other group or combination acting as a unit" as used in section 6005 does not include this state's sister states. Therefore, we cannot impose a sales tax nor a use tax on another state.

This does not mean, however, "that retailers who perform taxable services for [states other than California]" are not obligated to report and pay tax on their sales to such other states. Again, the sales tax is a tax on the retailer and not on the purchaser-consumer, even though the retailer may choose to pass the burden of the sales tax onto the purchaser-consumer. The California law does specify that "The [sales] tax ... imposed [by section 6051] shall be collected by the retailer from the consumer insofar as it can be done." [§ 6052.]

When you make a sale which is subject to the California sales tax, it is your legal obligation to pay the tax to this state. Whether you choose to reimburse yourself for this tax payment is a matter between you and your customer. The law does impose the restriction, however, that you

may not charge your customer an amount of sales tax reimbursement greater than the amount of tax which you are legally obligated to pay this state as a result of that particular sale."

As to the use tax, a tax complementary to but distinct from the sales tax, it is your obligation, when that tax is due on a particular transaction, to collect the tax from your customer and to remit it to this state. The tax is a tax on the purchaser although the retailer-collector is secondarily liable for an amount equivalent to the tax. [See § 6204.] Since a state other than this state cannot be required to pay a use tax, it cannot become your obligation to collect a tax which is not due.

In the transaction discussed in our letter of August 11, 1969, a double exemption situation apparently existed. The sale was exempt from sales tax because it was a sale in interstate commerce, and the use of the property by the purchaser was not subject to use tax because the purchaser was not a "person" as that term is used in section 6005. Thus, you were not required to pay sales tax nor were you required to collect for us from your customer the entirely separate use tax.

We note that the only reason there is not a 10 percent tax on every retail sale transaction which takes place in this state is that section 6401 provides that the use tax will not apply where the sales tax applies. Thus, from an analytical point of view, we must always look to see whether the sales tax applies to a particular transaction. If the sales tax does not apply, then we look to see if the use tax applies. If neither the sales tax nor the use tax applies, only then is the retailer, in the typical transaction, relieved of both the obligation to pay the sales tax and the obligation to collect the use tax.

Very truly yours,

Gary J. Jugum
Assistant Tax Counsel

GJJ:ph