

**STATE BOARD OF EQUALIZATION**

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September 3, 1985

Mr. D--- L. B---
Supervisor, General Accounting
W--- E--- Division
F--- Corporation
P. O. Box XXXX
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Dear Mr. B---:

Your letter of July 4, 1985, to Mr. C. M. H---, has been referred to the undersigned for reply. Your question concerns property which your company manufactures and sells to customers for use on wellsites located in federal waters outside California.

We understand that your company has a manufacturing facility in ---, Texas, and a sales/distribution warehouse in California. The property in question will be manufactured to the customer's order in ---, then shipped to the California warehouse for storage. When needed on the wellsite, either the customer will pick up the property at the warehouse, or your company will deliver it to the wellsite by company facilities or common carrier.

You have proposed certain procedures intended to relieve your company from any obligation to: (1) pay California sales tax on these transactions; or (2) collect California use tax from the customers. We have reviewed your proposals and question whether they are sufficient. Accordingly, we propose the following alternative procedures.

Sales Tax

Subdivision (a) of Sales and Use Tax Regulation 1620 provides in relevant part:

“...if title to the property sold passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transaction. The retailer has the burden of proving facts establishing his right to exemption.”

You propose to include a title clause in your acknowledgement of the customer's purchase order. The clause will "notify" the customer that title will pass to the customer at the point of manufacture in ---. To be effective, however, the title clause must be part of the sales contract between your company and the customer. A unilateral title clause is not acceptable. Accordingly, we recommend that the title clause be included in the customer's purchase order and is acknowledged by your company before the property is delivered in California.

If the customer submits a verbal order, or a written order which does not include an appropriate title clause, then you may include the title clause in your acknowledgement of the order. In that case, however, you should ensure that the customer accepts the title clause by signing a copy of the acknowledgement, and returning the signed copy to your company, before the property is delivered in California.

To prevent controversy, you should also be careful to avoid any actions inconsistent with the prior passage of title to the customer. For example, any time the property is shipped, the bill of lading should show the customer as the shipper, or should at least indicate that your company is acting as the shipper on behalf of the customer. Similarly, any insurance forms or other documents relating to the storage in California should not state or imply that your company has title in the property.

If the sale contract includes a clause under which title to the property passes to the customer outside California, then California sales tax will not apply, with one limited exception. The exception is where the contract is not performed as written. For example, if the property is delivered to the California warehouse, but the customer rejects or otherwise refuses to receive or retain the property, title in the property will revert in your company by operation of law. (See California Commercial Code Section 2401.) If your company then cures the defect and delivers the property to the customer in California, title will pass in this state and the sales tax will apply.

Use Tax Collection

With certain exceptions not relevant here, Revenue and Taxation Code Section 6203 imposes a duty to collect California use tax on "every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state...." The tax is to be collected at the time of making the sale, or if tax does not then apply, "at the time the storage, use, or other consumption becomes taxable...."

It is your position that the sales in question are not for storage, use, or other consumption in this state. You rely on Revenue and Taxation Code Section 6009.1, which provides that the terms "storage" and "use" do not include "the keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside this state for use thereafter solely outside this state...." Therefore, instead of collecting tax, you propose to obtain a purchase order from the buyer stating the purchased equipment is to be used in federal waters off-shore California.

Under the circumstances of this case, we agree that an appropriate certificate will relieve your company of the duty to collect use tax. The certificate must be in writing and must be signed by the purchaser or his authorized representative before or at the time of physical delivery to the customer. It must state that the property is purchased for use solely outside California at a named point or points outside this state. You must accept this statement in good faith (i.e., with reasonable belief that the facts stated therein are correct) and must retain a copy in your files.

To sum up, you company will not be required to pay California sales taxes on these transactions if title to the property passes to the purchaser outside this state. Your company also will not be required to collect California use tax, if you receive in good faith, and retain, an appropriate certificate from the purchaser as described above.

Please feel free to call or write the undersigned if you have any further questions or comments.

Very truly yours,

James E. Mahler
Tax Counsel

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