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**STATE BOARD OF EQUALIZATION**

(916) 322-3684

October 7, 1986

Dear

Your August 13, 1986 letter to Tax Counsel --- has been directed to me for a response. You request an opinion concerning the correct application of California sales and use tax law.

You write that --- is pursuing the possibilities of operating a photographic processing mini-lab and film store on board cruise ships that pick up passengers at California ports. As I understand the facts, --- will purchase photographic supplies from California retailers to be delivered to a freight forwarder in California for subsequent loading onto the cruise ship. --- will take delivery (possession) of the supplies once they have been brought on board the ship. --- will have no offices or "employees in California and the supplies purchased by --- will either be for resale or for its use in developing film and printing photographs on board the ship. All of the sales will be made in international waters to passengers on the cruise ship, and the usage of the supplies by will also occur in international waters.

You also write that it is your understanding that --- can purchase from California vendors items for resale exempt from tax. You inquire "To what extent or under what circumstances would ---, purchases from California vendors be exempt if the goods will be used rather than resold on the cruise ship?"

Revenue and Taxation Code section 6051 imposes tax on the gross receipts of retailers from the sale of tangible personal property in this state except where the sale is specifically excluded or exempted from taxation by statute. The provisions of section 6091 provide that all gross receipts are presumed to be subject to tax until the contrary is established and the burden of proving that a sale is not a retail sale is upon the person making the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale. Sales and Use Tax Regulation 1668, which interprets and applies the code, in pertinent part provides that any document provided by the purchaser to the seller will be regarded as a resale certificate if, among other specified elements, it contains the number of the seller's permit held by the purchaser... or in lieu of a seller's permit number, it contains an appropriate notation to the effect that the purchaser is not required to hold a seller's permit since the purchaser makes no sales in California. Section 6421 provides that if a purchaser certifies in writing to the seller that

the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempt... and... (subsequently) ... uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of sales tax as if he were a retailer making a retail sale of the property at the time of such use, and the cost of the property to him shall be deemed the gross receipts from such retail sale.

Finally, Sales and Use Tax Regulation 1620(a)(1) provides that “When a sale occurs in this state, the sales tax, if otherwise applicable, is not rendered inapplicable solely because the sale ... precedes a movement of the property from within this state to a point outside its borders.” Regulation 1620(a)(3)(A) provides that “Sales tax applies when the property is delivered to the purchaser or the purchaser's representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state...”

Applying the above criteria, we are of the opinion that, with regard to --- purchase of supplies which it intends to resell on board the cruise ship, --- can provide its California vendors with a resale certificate pursuant to Regulation 1668, thereby exempting the vendor's sales of these items from tax. On the other hand, the sale of those photographic supplies purchased by --- from California vendors for --- own use are taxable since --- takes possession of the supplies when they are delivered to --- on board the ship in California (Rev. & Tax. Code § 6051 and Reg. 1620(a)(3)(A).

Finally, with respect to those supplies purchased from California vendors by --- for resale which are subsequently used rather than resold on the cruise ship, section 6421 provides that, --- is liable for payment of the sales tax as if it were the retailer making a retail sale of the property at the time of the use and the cost of the supplies tor --- shall be deemed the gross receipts from such retail sale. ---

We hope the above information is helpful. Enclosed for your review and reference is a copy of Sales and Use Tax Regulation 1668 (Resale Certificates) and 1620 (Interstate and Foreign Commerce). If you have any further questions concerning this topic, please do not hesitate to write this office.

Very truly yours,

Robert J. Stipe  
Tax Counsel

RJS:sr  
Encs.

(916) 322-3684

July 11, 1988

Dear:

On August 13, 1986, you wrote this office requesting an opinion concerning, in part, the circumstances under which certain purchases for resale from California vendors which are subsequently used by the purchaser outside of California, rather than resold, would be exempt from California sales and use tax. In an October 7, 1986 letter we responded that, pursuant to Revenue and Taxation Code section 6421, ex tax purchases for resale subsequently used by the purchaser were subject to tax (see enclosed).

It has come to my attention that this response is partially incorrect.

California Sales and Use Tax Law imposes a tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in California (Rev. & Tax. Code § 6201). Revenue and Taxation Code section 6009.1 provides as follows:

“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 the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.”

Further, section 6094.5(b) of the Code provides that:

“Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes.”

Applying the above, it is our opinion that property purchased in California under a resale certificate and subsequently used outside of California, which at the time of purchase was contemplated to be resold, is excluded from tax pursuant to section 6009.1. However, if at the time of purchase the purchaser knew that the property purchased for resale was not to be resold, then the purchaser is liable for tax under section 6094.5.

I hope the above information is helpful. I apologize for any inconvenience our earlier reply may have caused.

Very truly yours,

Robert J. Stipe  
Tax Counsel

Enc.

cc: Mr. Glenn A. Bystrom  
Mr. William Dunn