



**STATE BOARD OF EQUALIZATION**

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August 4, 1988

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Dear Mr. ---:

This is in response to your letter dated June 21, 1988, in which you requested our opinion on whether a proposed sale will qualify for the "tax-paid purchases resold" deduction under Sales and Use Tax Regulation 1701. The facts as stated in your letter are as follows:

"We represent one of three major partners in a joint venture ('Taxpayer') formed to construct, own and operate a dairy products processing plant in California. Each of the partners will purchase dairy products from the joint venture for resale in the partners' respective retail grocery businesses. Taxpayer proposes to resell certain 'Tax-paid' processing equipment purchased for use in the plant under construction. Prior to consummation of the intended sale, Taxpayer desires to obtain a letter opinion from the State Board of Equalization (the 'Board') that such sale qualifies under the refund procedure contained in 18 Cal. Admin. Code Section 1701.

FACTS

"Taxpayer purchased dairy processing equipment from various manufacturers and suppliers (unrelated to Taxpayer) for the aggregate amount of approximately \$10,000,000.00. Although some of the equipment has been invoiced to the address of a related partnership, all of the equipment was purchased for the account of the Taxpayer. The equipment was purchased over a period of several months, beginning in approximately June 1987 and ending in early 1988. A 6% sales tax was paid by Taxpayer at the time of each purchase.

"At the time of purchase, Taxpayer intended to use the equipment in the plant currently under construction. Since the date of purchase, for financial and other reasons, Taxpayer now wishes to resell the equipment to a leasing company, L---, and lease the equipment back from L--- under a 'true lease' arrangement. L--- is an entity unrelated to Taxpayer. Taxpayer has made no use of the equipment

during this time; the equipment has been stored awaiting completion of the processing plant.

“L--- will pay sales tax on the purchase from Taxpayer. The purchase price to be paid by L--- will be the same amount paid by ---.”

Revenue and Taxation Code section 6012(a)(1) provides that a deduction of the purchase price of property may be taken by a retailer if the retailer has purchased the property for some other reason than resale, has reimbursed his vendor for tax, and has resold the property prior to using it. Sales and Use Tax Regulation 1701, which implements section 6012(a)(1), provides in pertinent part as follows:

“(a) PROCEDURE IN GENERAL. A retailer who resells tangible personal property before making any use thereof (other than retention, demonstration or display while holding it for sale in the regular course of business) may take a deduction of the purchase price of the property if, with respect to its purchase, he has reimbursed his vendor for the sales tax or has paid the use tax. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

“The deduction under the caption ‘Tax-paid purchase resold’ must be taken on the retailer’s return in which his sale of the property is included. If the deduction is not taken in the proper quarter, a claim for refund of tax must be filed.

“(b) CIRCUMSTANCES WARRANTING USE. This procedure should be used in any of the following circumstances:

“(1) The retailer when making the purchase intends to use the property rather than resell it, but later resells it before making any use thereof.”

You request our opinion on the following specific points:

“1. That Taxpayer qualifies as a ‘retailer for the purposes of the refund procedure set forth in 18 Cal. Admin. Code Section 1701;

Revenue and Taxation Code section 6015(a) defines a retailer as every “seller” who makes any retail sales of tangible personal property. A “seller” is defined by Revenue and Taxation Code section 6014 as every person who sells tangible personal property “of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.” The taxpayer will be a retailer and a seller of the plant equipment. In the context of this entire transaction, the sale of the plant equipment is not an occasional sale; rather, it is a sale in the regular course of the taxpayer’s business and requires the holding of a seller’s permit. The taxpayer’s representative who

applies for the seller's permit should take a copy of this opinion to the district office when so applying, to expedite matters.

“2. That Taxpayer has made no use of the equipment for purposes of the refund procedure set forth in 18 Cal. Admin. Code Section 1701;”

We have no first hand knowledge upon which to base an opinion one way or the other on whether the taxpayer has used the equipment. You state in your letter that the equipment has been stored awaiting completion of the processing plant. We would consider property stored under the circumstances to qualify as unused property for the purposes of Regulation 1701.

“3. That Taxpayer falls within the specific circumstances set forth in either Section 1701(b)(1) or Section 1701(b)(2);”

Under the facts stated in your letter, the taxpayer intended to use the property rather than resell it. You state that the equipment has been stored awaiting completion of the processing plant. Regulation 1701(b)(1) allows a deduction for tax-paid purchases resold if the retailer intended to use the property when making the purchase, but later resells it before making any use of the property. If the facts as you state them in your letter are correct, then it is our opinion that these facts fall within the circumstances set forth in Regulation 1701(b)(1).

“4. Therefore, that Taxpayer may take a deduction on a sales tax return equal to the purchase price of the equipment for the calendar quarter in which Taxpayer resells the equipment to L---.”

Regulation 1701 provides that (1) a retailer who (2) resells tangible personal property before making any use of it and (3) has reimbursed his vendor for the sales tax, may take a deduction of the purchase price of the property. According to the facts stated in your letter, the taxpayer purchased processing equipment which it intended to use in a plant under construction. The taxpayer has made no use of the equipment and the equipment has been stored awaiting completion of the plant. The taxpayer paid sales tax reimbursement at the time of each purchase. The taxpayer originally intended to use the equipment in the plant, but now intends to resell it. Under these facts, it is our opinion that the taxpayer qualifies for the tax-paid purchases resold deduction and may take a deduction on its sales tax return equal to the purchase price of the equipment for the calendar quarter in which it resells the equipment to L---.

Very truly yours,

Michele F. Hicks  
Tax Counsel

MFH:jb