

M e m o r a n d u m**405.0015**

To: Mr. Robert Nunes

Date: January 15, 1975

From: Gary J. Jugum

Subject: Consumer Use Tax Returns

X----- was in my office yesterday to discuss the question as to who must file consumer use tax returns. Specifically, he raises the question in the context of the purchase by a California taxpayer of tangible personal property from a “retailer engaged in business in this state” registered with this Board under Revenue and Taxation Code Section 6226 for the purpose of collection of use tax, who fails to bill or to collect from the taxpayer properly due California use tax. The question is – must the California purchaser directly report the use tax to the State of California?

Our “State, Local, and District Consumer’s Use Tax Return” provides that:

“This return should be filed by persons liable for state, local and district use taxes payable directly to the State who are not sellers of tangible personal property.....The state, local and applicable district use taxes are payable directly to the State by the purchaser when the property is purchased or leased from a retailer who is not engaged in business in this State and who does not hold a Certificate of Registration-Use Tax.”

The implication is that a return need not be filed when the property is purchased from a retailer who is engaged in business in this state and who does hold a certificate of registration-use tax.

The “State, Local and District Sales and Use Tax Return” provides that taxpayers are to enter, on line 2, “PURCHASE PRICE of merchandise, equipment, or other tangible personal property purchased ‘ex tax.’” “Ex tax” is explained to mean “...without payment of California state use tax by reason of a purchase from an unlicensed retailer such as a person making an occasional sale of a vessel or an aircraft or an out-of-state retailer.” It is not clear how this language should be read. The suggestion is that taxpayers need not directly report use tax on purchases from “licensed” out-of-state retailers, i.e., retailers engaged in business in this state who are registered to collect California use tax.

It would appear that the rule required by the Sales and Use Tax Law itself is that taxpayers must directly report use tax when the tax is due, even though they might have purchased the taxable property from a retailer engaged in business in this state who is registered with the Board, if the retailer fails to bill them for the tax. Revenue and Taxation Code Section 6202 provides that:

“Every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this State except that a receipt from a retailer engaged in business in this State [etc.] is sufficient to relieve the purchaser from further liability...”

Section 6451 provides that “The taxes imposed by this part are due and payable to the board quarterly...”

Section 6452 provides that:

“...for the purpose of the use tax a return shall be file...by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax.” [Emphasis added.]

Section 6453 provides that:

“...in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use, or consumption of which became subject to the use tax during the preceding reporting period.

“The return shall also show the amount of the taxes for the period covered by the return...”

It would appear that a person, purchasing property subject to use tax from a retailer registered with this Board for use tax collection purposes who fails to collect the tax, is required to directly report the tax to the Board. The instructions on the use tax return are inconsistent with this viewpoint and the instructions on the sales and use tax return are at least unclear on this point.

We call this matter to your attention although it is not clear that the problem is of such magnitude as to require that we take action.

j:alicetilton