

**STATE BOARD OF EQUALIZATION**

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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
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May 4, 1993

BURTON W. OLIVER
Executive Director

Mr. R--- Y---
M--- Auction Company, Inc.
XXXX --- Way
---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. Y---:

This office has received your recent letter in which you requested a written opinion on any requirement that M--- Auction Company supply consignors with resale certificates.

You state in your letter that your company is a consignment auction. The company seldom purchases items for resale. When an item is purchased for resale, a signed resale certificate is supplied to the seller. Over 96 percent of the company sales are items that have been consigned. Resale certificates issued for consigned articles state that "the tangible personal property described herein which I shall purchase from:" You state that you are uncomfortable signing a document given for consigned goods stating that you are purchasing the items when you are not.

Consignors who have purchased inventory items for resale without the payment of tax will be liable for the payment of tax if there is any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. Sales and Use Tax Regulation 1668(c) provides, in part,

"If the seller does not timely obtain a resale certificate, the seller will be relieved of liability for the tax only if the seller presents satisfactory evidence that the specific property sold:

"(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business,
or

"(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business . . ."

In the situation where a consignor has purchased items for resale without the payment of tax, a resale certificate given by your company will ensure that the consignee will not be held liable for tax in consigning the property. The resale certificate also is accepted by the Board as assurance that the consigned property will not be used for any purpose during the consignment period that will subject the property to tax.

The resale certificate provided by your company relieves the consignor of the burden of proving that the consigned property was used only for "retention, demonstration, or display while holding it for sale in the regular course of business." Without receiving a resale certificate, the consignor may not consign the property because it may expect that it would be responsible for any tax on the property assessed by the Board in addition to the tax applicable when the property is sold by McCoy Auction.

In answer to your question, there is no legal requirement that your company provide resale certificates to consignors of property. However, if you are concerned with the wording of the resale certificates given to consignors, the local office of the Board of Equalization has suggested you modify the language used in the certificates changing "purchase" to "taken on consignment."

Very truly yours,

Thomas Cooke
Tax Counsel

TC:cl