



STATE BOARD OF EQUALIZATION

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February 21, 1995

BURTON W. OLIVER
Executive Director

W--- F. F---
J--- T--- Co.
XXXX --- Blvd.
--- ---, CA XXXXX

**Re: N--- S--- & D--- M---, Inc.
SR -- XX-XXXXXX**

Dear Mr. F---:

This is in response to your letter dated November 7, 1994. In that letter you state:

"During the period from August 23, 1994 to October 11, 1994 we sold materials to N--- S--- & D--- M---, Inc. for which we charged sales tax when we learned that the resale (sic) permit number they gave us was no longer valid. That number, SR -- XX-XXXXXX, was no longer valid as of December 31, 1992. This company was originally a sole proprietorship, and apparently failed to get a new resale permit when they incorporated. They do have a new permit number now - SR EA XX-XXXXXXX - but it is dated October 15, 1994."

You also indicate that N--- S--- & D--- M---, Inc. is requesting a refund of the sales tax reimbursement charged by you during the period of August 23, 1994 through October 11, 1994. Your position is that a refund of the sales tax reimbursement collected by you would be "in violation of the law".

Please take note that the permit number you have provided, SR -- XX-XXXXXX is incorrect and not the number that was assigned to N--- S--- and D--- M---. The correct permit number for that business was SR -- XX-XXXXXX. That permit was inactive from August 23, 1994, through October 11, 1994 during which time you made sales to N--- S--- and D---, Inc. The account was, as you have noted, closed out on December 31, 1992. You are also correct that N--- S--- & D--- M---, Inc. did not acquire a seller's permit until October 14, 1994.

Revenue and Taxation Code section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail. Revenue and Taxation Code section 6006 defines "sale" as "(a) any transfer of title or

possession . . . of tangible personal property for a consideration" and section 6007 defines "retail sale" as "a sale for any purpose other than resale in the regular course of business."

Revenue and Taxation Code section 6091 states:

"For the purpose of the proper administration of this part and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale."

Sales for resale are not subject to tax. A resale certificate operates to relieve the seller from liability for sales tax if taken: (1) in good faith, (2) from a person who is engaged in the business of selling tangible personal property, and (3) from a person who holds a valid seller's permit. (Emphasis added.) (Rev. & Tax. Code §6092; Sales and Use Tax Reg. 1668(a).) However, if you could prove to the satisfaction of the Board that the specific property was in fact resold by the purchaser and was not used by it for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, you might be able to request a refund of the taxes paid by you on those sales following which you could refund the sales tax reimbursement collected on those sales to the buyer. Sales and Use Tax Regulation 1668, subd. (C) copy enclosed.

Assuming that you had been issued a resale certificate by N--- S--- & D--- M--- for the period in question you would not have been able to honor it given the fact that N--- S--- & D--- M--- did not have a valid seller's permit as required under the authority above cited. In that it did not have a valid seller's permit it could not have not issued a resale certificate; therefore, any sales to it would be retail sales and taxable to you. We note that the newly formed company does have a valid seller's permit and might qualify to purchase goods from you for resale. However, there is no provision under the law to back date a seller's permit for the purpose of issuing resale certificates. Thus, charging sales tax reimbursement was appropriate and its refund is not provided for under the law.

Yours very truly,

Anthony Picciano
Staff Counsel

AP:es

cc: --- --- District Administrator (--)