

## Memorandum

**480.0355**

To : Vic Anderson, Supervisor  
Special Projects Team – MIC:40

Date: July 8, 2003

From : John Abbott  
Tax Counsel IV – MIC:82

Subject: **Section 6015 Retailers – Resale Certificates From Agents**

In your March 19, 2003, memorandum to Assistant Chief Counsel Janice Thurston, which was referred to me for reply, you wrote:

“We are requesting your review and opinion regarding section 6015(b) retailers. The Sales and Use Tax Department has allowed section 6015(b) retailers to accept resale certificates from their agents who possess a seller’s permit issued for a non-section 6015(b) related business and sell through a storefront. This practice is based on a March 11, 1997 memorandum (attached) to District Administrators written by Mr. Dennis Fox, former Program Planning Manager.

“A review of annotations 475.0168.200 and 480.0350 and their supporting letters state that a section 6015 retailer may not accept any resale certificate. These annotations appear to be inconsistent with the practice explained in the March 11, 1997 memorandum.

“We would like to continue the practice of allowing resale certificates to be accepted by 6015 retailers pursuant to the March 11, 1997 memorandum. We request a legal opinion intended for annotation on the acceptance of resale certificates by section 6015(b) retailers from their agents who possess a seller’s permit issued for a non-section 6015(b) related business and sell through a storefront. The opinion will help resolve the apparent conflict with other annotations.” [Emphasis in original].

### Background

Revenue and Taxation Code section 6015, subdivision (b) provides:

“(b) When the Board determines that it is necessary for the efficient administration of this part to regard any salesmen, representatives, peddlers or

canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, or employers the board may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for purposes of this part.”

Annotation 475.0168.200 states in part: “Purchases for Resale from a Section 6015 Retailer. A section 6015 retailer cannot accept a resale certificate from its sales representatives.... 11/24/93.” Annotation 480.0350 states:

“Section 6015(b) Retailer—Sales to Holders of Seller’s Permits. A person, who has been classified by the Board as a section 6015(b) retailer, is responsible for tax on the ultimate retail selling price of the property sold by independent contractors to California consumers. A section 6015(b) retailer is considered the retailer of all sales made by its independent contractors, even those who have California seller’s permits. Accordingly, a section 6015(b) retailer cannot properly accept a resale certificate with respect to its sales to its independent contractors despite the fact that they may have California seller’s permits. 1/16/96.”

## **Discussion**

We agree with your view that there is a conflict between section 6015(b) and these two annotations with respect to resale certificates. Section 6015(b) is permissive; it merely provides that the Board “may” regard “salesmen, representatives, peddlers or canvassers” as the agents of dealers, distributors, and others, and classify those dealers, distributors, and others as the retailers. The annotations interpret section 6015(b) to mean that, although the Board may choose to regard a dealer, distributor, or other person as a retailer, once it does so, then all of its “salesmen, representatives, peddlers or canvassers,” without exception, must be regarded as agents of that retailer. The statute does not support this interpretation. Thus, if a section 6015 retailer’s designated agent holds a seller’s permit for a different business, and has a storefront for that business, section 6015(b) does not prohibit the Board from allowing those types of agents to issue resale certificates. Since you would like to continue that administrative policy, we will recommend deletion of the two annotations in conflict.

JA/sw

cc: Ms. Freda Orendt (MIC: 47)  
Ms. Charlotte Paliani (MIC: 92)  
Ms. Kelly Reilly (MIC: 47)  
Mr. Jeffrey L. McGuire (MIC:40)  
Mr. Bruce Henline (OH)  
Mr. Jim Kuhl (MIC:40)  
Ms. Dorothy Laura (MIC:40)  
Mr. Tim Kennedy (MIC:40)  
Mr. Dave Rosenthal (MIC:50) [please delete annotations 475.0168.200 and 480.0350 for  
the reasons stated in this memo]