



STATE BOARD OF EQUALIZATION

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December 21, 1992

Ms. S--- R---
R--- A--- S---
XXX --- ---
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Ms. R---:

This is in response to your letter of October 5, 1992. You state that you are hired by M--- to do appliance repairs in California to fulfill M---'s obligations under optional warranties. When you bill M---'s you have been separately stating your labor and parts, and charging sales tax on the parts. M---'s has objected to paying the tax and has given you a resale certificate.

You were given a copy of Regulation 1655 which applies to returns, defects, and replacements. The first half of Regulation 1655(c)(3) reads as follows:

“The person obligated under an optional warranty contract to furnish parts, materials, and labor necessary to maintain the property is the consumer of the materials and parts furnished and tax applies to the sale of such items to him.”

The person obligated under the optional warranties is M---'s. This makes M---'s the consumer and requires M---'s to pay tax on all parts and materials purchased. It does not matter from whom the parts are purchased.

Once M---'s is defined as the consumer, it is not proper for M---'s to provide a resale certificate. M---'s may believe that they may purchase parts for resale, and then report and pay the tax directly under the second half of Regulation 1655(c)(3) which reads:

“If he purchased the property for resale, without tax paid on the purchase price, he must report and pay tax upon the cost of such property to him....”

But this applies to situations where parts are purchased for resale before it is known that they will be used for repair work under an optional warranty.

You are the retailer of the parts to M---’s. Under Regulation 1546 you are required to segregate on your invoices the fair retail selling price of the parts and materials, from the charges for repair and installation labor.

It is possible that M---’s misread annotation 315.0320 which concerns subcontracting of repairs. But, that annotation applies to the subcontracting of normal repairs, wherein the owner having the repair work done pays for that specific repair. It does not apply to the referring out of work obligated under an optional warranty.

If you have further questions, please contact me.

Sincerely yours,

Donald L. Fillman
Tax Counsel

DLF:wk