



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-2641
FAX 323-3387

MEMBER
First District

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

December 9, 1994

BURTON W. OLIVER
Executive Director

Mr. --- --- ---
D--- C--- C--- A---
--- --- Street
---, CA -----

Dear Mr. ---:

I am responding to your letter of September 23, 1994. You ask how tax applies to your purchases of dairy equipment from out-of-state vendors.

You process and manufacture dairy products. You purchase equipment such as separators, tanks, and dryers from out-of-state vendors to be installed in the process line at your California plant. The equipment does not become operational for six months to a year because its installation requires substantial plumbing and electrical work. You ask whether your purchase of the equipment becomes subject to sales or use tax at the time you receive the equipment or when you first functionally use the equipment by operating it.

Retail sales of tangible personal property in California are subject to sales tax measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price of the property sold, applies to the use in California of property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401.) Thus, when the vendor makes a retail sale inside California and that sale is not exempt, sales tax applies. When the vendor makes a sale outside California to a person who purchases the property for use in California, use tax applies. (Rev. & Tax. Code §§ 6201, 6401.) Since your purchase occurs outside California and you purchase the equipment for use in California, use tax applies to your purchase, measured by the total price of the equipment.

You must report and pay that use tax for the reporting period in which you first use the equipment in California. Revenue and Taxation Code section 6009 defines "use" as follows:

"Use' includes the exercise of any right or power over tangible personal property incident to the ownership of that property, and also includes the possession of, or the exercise of any right or power over, tangible personal property by a lessee under a lease, except that it does not include the sale of that property in the regular course of business."

You exercised the right or power over the equipment incident to the ownership of the equipment when the equipment entered California. The time of invoicing is irrelevant to the determination of the application of use tax. In other words, use tax applies to the purchase of the equipment at the time it entered California. The measure of the tax is the total purchase price of the equipment.

If you have further questions, please feel free to write.

Very truly yours,

Victor G. Matl
Tax Counsel

VGM:cl

cc: -- District Administrator