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November 29, 1994

BURTON W. OLIVER
Executive Director

Mr. C--- F. M---
Vice President, Finance
R--- - H--- Corporation
P. O. Box XXXXX
M---, --- XXXXX-XXXX

Re: **R--- - H--- Corporation**
SZ - XX-XXXXXX

Dear Mr. M---:

This is in response to your September 12, 1994 letter regarding R--- - H--- Corporation's (hereafter "R--- - H---") ability to claim a credit against California sales or use taxes.

You state that R--- - H---, or a related company, manufactures dock levelers and restraints in Wisconsin, Iowa and Michigan. R--- - H--- also purchases this equipment for resale from unrelated companies in Tennessee and Wisconsin. Some of this equipment is stored in Wisconsin prior to being sold to California customers for installation and use inside this state. R--- - H--- is engaged in business in this state and holds a California seller's permit. R--- - H--- sells its equipment through independent representatives and through A--- Equipment Corporation, a direct sales and service division of R--- - H--- with offices in California.

You state that Wisconsin recently began taxing property stored inside that state. In particular, the temporary storage of goods inside Wisconsin for sales in the regular course of business outside the state are now subject to a Wisconsin use tax. You ask whether R--- - H--- is allowed a credit for the use tax it pays to Wisconsin against the taxes imposed by California for the sale or use of R--- - H---'s property inside this state.

Discussion

It is unclear whether R--- - H---'s sales to its California customers occur in Wisconsin, California or both. Sales tax applies to R--- - H---'s gross receipts from its retail sale of tangible personal property in California unless the sale is specifically exempted from taxation by statute. (Rev. & Tax. Code § 6051.) When the sale occurs outside California, use tax applies to the storage, use or consumption of property purchased from R--- - H--- for use in California. (Rev. & Tax. Code §§ 6201, 6401.) Use tax is imposed on the person actually storing, using or otherwise consuming the property within the state. (Rev. & Tax. Code § 6202.) R--- - H---, however, is required to collect the applicable use tax from the purchaser at the time of the sale of property to be used inside this state. (Rev. & Tax. Code § 6203.)

The statute relevant to whether any credit is available to R--- - H--- with respect to tax paid to Wisconsin is Revenue and Taxation Code section 6406:

"A credit shall be allowed against, but shall not exceed, the taxes imposed on any person ... by reason of the storage, use, or other consumption of tangible personal property in this state to the extent that the person has paid a retail sales or use tax, or reimbursement therefor, imposed with respect to that property by any other state, political subdivision thereof, or the District of Columbia prior to the storage, use, or other consumption of that property in this state. The credit shall be apportioned to the taxes against which it is allowed in proportion to the amounts of those taxes.

"...."

This means that a person is entitled to a credit for tax or tax reimbursement paid with respect to tangible personal property in another state only against its own liability for use tax. The rationale for this credit is to fully tax each retail transaction only once under circumstances where property is used by a purchaser in California after that purchaser had incurred tax liability in another state. Thus, R--- - H--- is entitled to a credit under section 6406 only for tax or tax reimbursement it paid with respect to tangible personal property against any California use tax it owes on its own use of that property in this state.

In the present situation, R--- - H--- does not incur a use tax liability on its own use of equipment inside this state. Instead, R--- - H--- sells its equipment to California customers and either pays sales tax or collects use tax from its customers. Where sales tax is due, R--- - H--- cannot claim a section 6406 credit since it does not incur any use tax liability. Where use tax is due with respect to Rite Hite's sales, it is also not entitled to a section 6406 credit since this tax is imposed on the California customer (not R--- - H---) for the customer's use of property inside

this state. Although R--- - H--- does have the obligation to collect it (and owes the amount of any use tax if fails to collect), the use tax is imposed on the purchaser. (Rev. & Tax. Code §§ 6202, 6203, 6204.)

The dilemma faced by R--- - H--- is not caused by the absence of a tax credit by California, but rather by Wisconsin's view that R--- - H---'s temporary storage of property in that state is subject to use tax. Thus, R--- - H---'s transactions with its California customers include two taxable events, the use (temporary storage) of property by R--- - H--- in Wisconsin, followed by R--- - H---'s sale of the property (or use by its customers) in California. Again, the section 6406 credit applies only under certain circumstances where there is a single retail transaction, not under the circumstances where there are in effect two retail transactions, each of which is taxable under the laws of the state where each occurs. Although there would have been only one tax if all the transactions occurred in California, each state's tax is "internally consistent" within the constitutional requirements set forth by the United States Supreme Court. Thus, R--- - H--- is not entitled to a credit for the use tax it pays to Wisconsin on property sold in California or used in this state by its customers.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

cc: --- --- District Administrator - --