



---

**STATE BOARD OF EQUALIZATION**

July 9, 1963

City of ---  
Office of the City Attorney  
---, California

-- - XXXXXX

Attention: Mr. R--- R. S---  
City Attorney

Gentlemen:

In your letter of July 2 you ask our opinion as to whether a municipality holding a seller's permit may purchase property from out of city suppliers for its use under resale certificates and report and pay the use tax with its annual returns. In this way city monies paid for local use taxes would be allocated to the city.

Regardless of what may appear to be good reasons for following this procedure, we think that such a use of resale certificates would be improper under the Sales and Use Tax Law.

As you are aware, the provisions of the California Sales and Use Tax Law are incorporated into each local sales and use tax ordinance. The giving of a resale certificate does not automatically convert a retail sale into a sale for resale and thus make the only applicable tax the use tax. Section 6091 of the California Sales and Use Tax Law creates a presumption that all gross receipts are subject to sales tax and the burden of establishing that each sale is not at retail is placed upon the seller. Section 6092 relieves the seller of that burden of proof only if he takes a resale certificate in good faith from a person who is engaged in the business of selling tangible personal property, who holds a valid seller's permit and who, at the time of purchasing the property, intends to resell it in the regular course of business or is unable to ascertain at that time whether the property will be resold or will be used for some other purpose.

We doubt that sellers could in "good faith" accept resale certificates for all property purchased by a municipal corporation.

Under section 6094.5, a person who gives a resale certificate to his vendor for property which he knows at the time of the purchase will be used rather than resold by him in the regular course of business for the purpose of avoiding payment to the vendor of the amount of the tax applicable to the transaction is guilty of a misdemeanor. Your proposed procedure may well fall within that prescription.

For your information, we enclose copies of two bulletins entitled "Resale Certificates -- Their Use and Misuse."

We trust this explanation is sufficient for your purposes. However, if you have any further questions, please feel free to write to us.

Very truly yours,

John H. Murray  
Associate Tax Counsel

JHM:o'b  
Enc.

cc: Honorable Richard Nevins  
Mr. Harry L. Say  
--- --- - District Administrator  
--- - Subdistrict Administrator