

Memorandum

To : Ms. Kristine Cazadd
Interim Executive Director (MIC 73)

Date: October 27, 2010

From : Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department (MIC 43)

Subject : Board Meeting, November 16 – 18, 2010

Item N: Administrative Agenda

Proposed Revisions to Audit Manual Section 0409.50, *Acceptable Documentary Evidence to Support Sales for Resale*, and Section 0409.60, *Purchase Orders and Resale Certificates*

In accordance with the established procedures for audit and compliance manual revisions, I am submitting the proposed revisions to Audit Manual (AM) section *0409.50, Acceptable Documentary Evidence to Support Sales for Resale*, and section *0409.60, Purchase Orders and Resale Certificates*, for your approval to forward to the Board Proceedings Division. These revisions incorporate changes to Regulation 1668, *Sales for Resale*, regarding qualified resale certificates and the specificity of the resale reference on purchase orders.

The proposed revisions have been reviewed and approved by SUTD management, provided to Board Members, and posted for two months on the Board's website (<http://www.boe.ca.gov/sutax/staxmanuals.htm>) to solicit comments from interested parties. We received no comments from the public.

A copy of the revised AM sections 0409.50 and 0409.60 is attached for your reference. We request your approval to forward it to the Board Proceedings Division for placement on the next Administrative Agenda as a consent item.

If you have any questions, please let me know or contact Ms. Susanne Buehler at 323-8690.

JLM:nvm
Attachment

Approved:

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the 11-18-10 Board Meeting

Diane G. Olson
Diane G. Olson, Chief
Board Proceedings Division

Kristine Cazadd
Ms. Kristine Cazadd
Interim Executive Director

cc: (all without attachments)
Mr. Stephen Rudd (MIC 46)
Ms. Freda Orendt (MIC 47)
Ms. Suzanne Buehler (MIC 92)
Mr. Kevin Hank (MIC 49)
Ms. Kelly Reilly (MIC 47)
Ms. Erin Little (MIC 46)

ACCEPTABLE DOCUMENTARY EVIDENCE TO SUPPORT SALES FOR RESALE

0409.50

A claimed sale for resale should be allowed if it is supported by a resale certificate that is proper in form and is timely taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, an appropriate notation to that effect should be entered in lieu of a seller's permit number on the resale certificate. See Regulation 1667 for exemption certificate requirements. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser.

Sales to Mexican Merchants for resale are allowable if ~~the certain~~ requirements ~~outlined in Tax Tip Pamphlet No. 32~~ are met. The auditor should insure that the purchaser was the person named on the Mexican Merchant identification card, the card was valid at the time of the sale (cards have expiration dates), and the merchandise purchased for resale related to the special business classification codes on the card ~~and described in the pamphlet~~. Assistance in verifying Mexican merchants registered under the program and the type of property they are authorized to purchase for resale can be obtained by calling the San Diego District. Additional information about the program is contained in Publication 32.

Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the essential elements in Regulation 1668. A signed resale certificate ~~which that~~ has been ~~sent scanned and transmitted electronically or~~ via a facsimile machine (faxed) is acceptable provided that it contains all of the information required by Regulation 1668, is timely and accepted in good faith, and contains the date and time of transmission and telephone number of the sender either on the document itself, or on the proof of transmission such as a copy of the email, or on the standard fax cover sheet.

~~Other forms~~ Documents that qualify as of a valid resale certificate include:

- ~~A notation ("resale") on a purchase order where a qualified blanket resale certificate is on file~~
- 1. A purchase order ~~taken where that contains~~ all the elements of a valid resale certificate. Unless a valid qualified resale certificate is on file, the purchase order must contain the phrase "for resale" and all other elements of a valid resale certificate.

2. A valid qualified resale certificate taken timely and in good faith, combined with a purchase order that contains any of the following phrases or similar terminology to indicate that tax or tax reimbursement should not be added to the sales invoice.

- “for resale”
- “resale = yes”
- “taxable = no”
- “nontaxable”
- “exempt”

A purchase order where the tax amount is zero (\$0) or is left blank does not indicate that the property is purchased for resale, unless the purchase order includes the phrase “for resale” or any of the terminology described previously to specify that the property purchased is for resale. If each purchase order does not so specify, or is not issued timely within the meaning of Regulation 1668(a), it will be presumed that the property covered by that purchase order was not purchased for resale and that sale is subject to tax.

If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials for resale and also for tooling used to process the raw materials should specify that the raw materials are purchased for resale and that the sale of the tooling is subject to tax.

A seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support sales for resale.

3. A letter covering a specific purchase from an out-of-state retailer or from a California purchaser if all the elements of a resale certificate are shown therein.
4. Contracts of sale where all the essential elements of a resale certificate are included. (The auditor should be especially careful to scrutinize transactions where the purchaser claims to be reselling to the U.S. Government by determining the merchandise is actually resold in the form of personal property, title passed to the Government prior to any use by the purchaser, and it is not used in making improvements to real property.)

Other evidence of the validity of a claimed sale for resale may be accepted, such as:

- Personal knowledge of the auditor gained from audits of the vendees or other sources that the purchase was actually made for resale purposes.
- A satisfactory response to a Form BOE-504 (XYZ letter) inquiry (See AM sections 0405.20(j) and 0409.51, and AM Chapter 4 Exhibit 9 for more details).

PURCHASE ORDERS AND RESALE CERTIFICATES

0409.60

A resale certificate may be qualified by specific instructions on the purchase order. A purchaser who issued a blanket resale certificate to a supplier may specify on a purchase order that the property to be purchased is taxable. Purchase order files should be examined when doubtful situations arise. However, under such circumstances, the purchaser will bear the burden of establishing either that the purchase order was received by the seller or that ~~the~~ tax was paid to the seller.

The seller should obtain a resale certificate qualified by special instructions, i.e., one that states “see purchase order,” when a purchaser wishes to designate on each purchase order that the property is for resale. Each purchase order must specify whether the property covered by the order is purchased for resale or whether tax applies to the order. Refer to AM section 0409.50, item #2.