

**STATE BOARD OF EQUALIZATION**

916-445-5550

December 18, 1986

[X]

Dear [X]:

Your letter dated October 21, 1986 to the Franchise Tax Board has been referred to me on behalf of the legal staff of the Board of Equalization, which administers the California Sales and Use Tax. In your letter, you state:

“The [S] has their main office in [City, California]. They also operate branches throughout the Far East. One such branch is in Camp [Z], Japan. Their mailing is done through an APO San Francisco 96343 address. This is a military postal address and the organizations/individuals using the address are not physically located in the State of California.

“...If a customer of [S] orders imprinted checks, he sends his order through [S]. [S] then sends the order to the check printer who mails the new checks to the customer and debits the account of [S]. [S] in turn debits the customer's account. The problem is that [S] has been assessing the California sales tax to customers outside the State of California because the check printer has charged [S]'s account.”

Sales Tax is imposed on retailers on their sale at retail in this state of tangible personal property, unless the sale is otherwise excluded or exempted from taxation by statute. (Rev. & Tax. Code § 6051.) A “sale at retail” is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code §6007.)

A retailer making a sale at retail may collect reimbursement for his sales tax liability from his customer if he does so in conformity with Civil Code Section 1656.1. This “sales tax reimbursement” is the charge made by the printer and then taken by [S].

There are two discrete transactions set forth by your letter. One transaction is a sale of checks by the printer to [S] for resale in the regular course of [S]'s business. This is shown by the printer's treatment of the transaction – he obtains the order and payment for that order from [S]. The other transaction is a sale at retail by [S] to its customers. This is shown by [S]'s treatment of the transaction – it obtains the order and payment for that order from its customers. Although the printer mails the checks to [S]'s customers, he does so on [S]'s behalf. (See, e.g., Business Taxes Law Guide Anno. 495.0980 (8/25/58).)

Since the first transaction, the sale of the checks by the printer to [S], is for resale and not at retail, the transaction is not subject to sales tax. The printer, therefore, must not charge [S] sales tax reimbursement.

I assume that [S] is a federal credit union organized pursuant to the Federal Credit Union Act, 12 U.S.C. section 1751 et seq. As a federal credit union, [S] is exempt from all state taxes except certain taxes not relevant here. (12 U.S.C. §1768; Rev. & Tax. Code §6402; United States v. State of Maine (D. Maine 1981) 524 F.Supp.1056, 1058-59.)

In summary, the sale of checks by the printer to [S] is a sale for resale not subject to California sales tax. The retail sale of checks by [S] is not subject to California sales or use tax because [S] is a federal credit union. (We also note that, under the facts set forth in your letter, were [S] not a federal credit union, the subject sales would be exempt from sales tax as a sale in foreign commerce. (Sales and Use Tax Regulation 1620(a)(3).))

You ask how the matter should be handled so that the printer does not collect sales tax. Since the printer is selling the checks to [S] for resale, [S] should issue the printer resale certificates as explain in Regulation 1668, a copy of which is enclosed. In the location on the certificate for a seller's permit number, [S] should make a notation that, as a federal credit union, it makes no sales in this state subject to sales or use tax. These certificates should rectify the situation. If not, please give the printer a copy of this letter, which he should consider as instructions to accept resale certificates from [S] in lieu of collecting sales tax reimbursement.

The facts set forth in your letter also raise an additional matter of "excess tax reimbursement," which is the collecting of sales tax reimbursement when no sales tax is due. The printer collected excess tax reimbursement from [S] because the sales were not subject to tax. If the printer has paid these funds to this board, he may request a refund in letter form addressed to Audit Review and Refund, P.O. Box 942879, Sacramento, CA 94279-0001. The refund will be conditioned on return of such funds to [S] for refund to its customers.

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

Sincerely,

David H. Levine
Tax Counsel

DHL:jb
Enclosure