

185.0000 CONSIGNEES AND LIENORS OF TANGIBLE PERSONAL PROPERTY FOR SALE—Regulation 1569

185.0004 Art Shows. An art association holds art shows at which 40 or 50 artists exhibit their work at individual booths. The association provides a central cashier to handle all credit card sales (but not cash sales). The association also pays the discount fee charged by its credit card processor. When a customer makes a credit card purchase, the artist completes a sales receipt writing “credit sale” on the receipt, and gives a copy to the customer. The customer takes the sales receipt to the central cashier who processes the credit card charge amount including “sales tax” from the information on the sales receipt. The cashier gives the customer a copy of the “credit receipt” and the customer returns with it to the artist’s booth in order to obtain the item purchased. Each artist has his or her own seller’s permit. After the show, the association sends checks to the artists for the amounts of their credit card sales after deducting commissions and other fees due the association. Since the artists are making retail sales and transferring title and possession of the artwork to the customers, they must report the sales and pay the sale tax to the Board. The association, representing the artists in dealing with third persons by processing credit card sales and collecting sales tax reimbursement from credit card customers on behalf of the artists, must remit to the artists the sales tax reimbursement which it collected on credit card sales. 1/8/98. (M99–2).

185.0009 Brokers of Vehicles. When a dealer making the sale of a vehicle, mobile home, or commercial coach completes a report of sale, then “a retail sale of the vehicle is made through him” within the meaning of section 6275(b). He must report and pay tax on the portion of the price attributed to the vehicle even though he acted solely as a broker. The statute does not provide that he is the retailer of the “nonvehicle” accessory items and he is not the retailer thereof unless he has the power by his own act to pass title to the property. 1/16/78.

(Note: Subsequent statutory changes re mobile homes.)

185.0010 Consignee of Tangible Personal Property. A taxpayer contracts with customers to help them sell their pianos. Under the terms of the agreement the taxpayer will appraise the piano for a fee, recommend a suggested selling price, list the piano in the taxpayer’s computer listing, and use his/her best efforts to sell the piano. For this purpose the taxpayer generally takes possession of the piano while holding it for sale.

Under the terms of the listing agreement the owner authorizes the taxpayer to sell the piano for a minimum stipulated price without further approval from the owner. In addition, the taxpayer is authorized to receive money, sign a bill of sale, and act as the owner’s authorized agent in all matters pertaining to the sale. As such, the taxpayer is the retailer of the piano and the transaction is subject to sales tax unless otherwise exempt. However, where the taxpayer must, in order to make a sale, seek special approval from the owner on a matter that is outside the scope of the listing agreement (e.g., make repairs to the piano), the taxpayer is not a retailer but is acting as a broker. 7/21/92.

185.0013 Court-Ordered Sale in an Anti-Trust Suit. The final judgment in an anti-trust suit ordered a taxpayer to divest itself of certain facilities and business activities within 24 months. If the divestitures were not accomplished within 24 months, the taxpayer was required to place control of the property in a trustee who would sell the property subject to approval of the government. The taxpayer retained the right to object to the court to the terms and conditions of the sale. The taxpayer failed to sell the property within the 24 months and the court ordered the taxpayer to irrevocably convey the property to a trustee. The trustee was granted full authority to dispose of the property subject to the supervision of the court. The taxpayer retained the right to object to the court to the details of any contemplated sale. The property was ultimately sold and the sale was approved by the court. The proceeds were transferred by the trustee to a bank in reduction of the taxpayer's indebtedness to the bank.

The status of the court-appointed trustee in the above situation is not the same status as held by a court-appointed trustee in a bankruptcy case. The bankruptcy trustee has powers as defined by statutes in the Bankruptcy Act. The bankruptcy trustee is trustee primarily for the creditors rather than for the bankrupt owner. The trustee in this situation is in effect a sales agent or broker for the taxpayer despite the facts that the court appointed the trustee and the taxpayer conveyed the property to the trustee. All tangible benefits of the final sale accrued to the taxpayer. For sales and use tax purposes, the relationship of the trustee and the taxpayer was that the trustee was the agent of the taxpayer for purposes of selling the property subject to approval of the court. The taxpayer is therefore liable for tax on the sale of those assets which are tangible personal property, other than inventory, used in a business requiring the holding of a seller's permit. 6/23/78.

185.0020 Power to Transfer Title Generally. A person in the business of storing aircraft, owned by others, who demonstrates such planes advertised for sale by owners and, at the request of buyer and owner makes arrangements for financing thereof, is not a retailer where he does not have the power, by his own act, to vest title in the buyer. 8/19/64.

185.0040 Power to Transfer Title Generally. A gallery selling a painting consigned to it by an owner is not a retailer liable for payment of sales tax unless it has the power to transfer title to the buyer. 11/2/64.

185.0060 Bill of Sale. Persons who have the power to transfer title to property, and exercise it, either by obtaining title to the property prior to its sale, by executing a bill of sale to the purchaser under power of attorney from the legal owner, or by obtaining a signed bill of sale from the legal owner and delivering it to the purchaser, are regarded as retailers, and the tax applies to the sales of such property by them. 12/15/52.

185.0080 Bill of Sale. When a yacht owner signs the bill of sale, and gives it to the broker authorizing him to sell at a stated price, the owner has invested the broker with power to create an ownership interest in the purchaser. The broker becomes liable for the sales tax upon the consummation of a sale through the exercise of such power. 2/16/59.

185.0100 Dealer Aid to Purchaser. Where an airplane dealer aids a prospective purchaser in locating and purchasing an airplane from a third party by locating a willing seller, having the plane brought to his place of business, or aiding the buyer in examining the plane and in addition obtains financing for the buyer by executing a conditional sales contract as the seller and discounting it with a bank with recourse, he is the retailer of the plane and makes a taxable sale. 3/29/65.

185.0120 Exclusive or Open Listing. The liability of a yacht broker does not depend upon whether he holds an exclusive or an open listing. It depends rather upon whether he has the right to beneficial use of the boat or the power by his own act to vest ownership in another. 3/18/53.

185.0140 Liability of Consignee. The placement of stamps for the purposes of philately in the possession and control of a stamp and coin shop by the owner of the stamps, with the expectation that the shop owner would sell them to the highest bidder makes the shop owner subject to sales and use tax liability under Regulation 1569. Tax applies to the total gross receipts from such sales. 1/28/66.

185.0141 Liability of Consignee. "A," who does not have a seller's permit, uses a mini mart's seller's permit number to buy gasoline from the distributor. The gasoline purchased is sold through the mini mart. The distributor invoices "A" for the fuel and the mini mart does not get a copy of the invoice. The mini mart reports the net of the sales tax collected on its retail sales less the precollected sales tax paid by "A" to the distributor.

The mini mart is regarded as an independent contractor taking possession of fuel owned by "A" to sell on consignment. Thus, the mini mart is the retailer of the fuel and tax applies to the gross receipts of the fuel sold by the mini mart. In addition, "A" should hold a seller's permit since it is engaged in the distribution and sale of gasoline and other petroleum products. "A" is required to precollect the sales tax from and issue an invoice to the mini mart. 9/19/90.

185.0160 Liability of Consignee. A dealer is liable for tax on a sale of a house trailer held on consignment if he had the power to transfer title and did transfer such title after the owner and purchaser had agreed upon the price. 5/2/57.

185.0180 Liability of Consignee. Tax applies to sales by pet stores of pets consigned to them for sale. 6/13/50.

185.0200 Limitation on Broker's Authority, Evidence of. A yacht broker is regarded as a true broker and not a retailer for any transaction in which his authority is limited to obtaining an offer from a buyer and conveying the offer to the owner of the yacht or ship for his acceptance. A letter, telegram, or other writing executed by the owner of the yacht or ship prior to sale for the purpose of communicating or recording an acceptance of the buyer's offer is regarded as satisfactory evidence of the limitation on the broker's authority. 11/19/65.

185.0203 Lien Holder. A landlord owned a commercial building. He rented office space to various tenants. He did not hold a seller's permit. A tenant abandoned the leased premises, leaving behind various equipment. At least some of the equipment was subject to liens. The landlord purchased the abandoned equipment from various lien holders. He later located a new tenant who agreed to lease the

office and to purchase the equipment. The new tenant planned on selling most of the equipment and to use the proceeds to reduce the amount owed to the landlord. By agreement, the new tenant located buyers and arranged all terms of the sales and the landlord invoiced the buyers, collected the money and credited the tenant for the amount collected. The landlord is regarded as making only one sale, the sale of the various pieces of equipment to the tenant. This was an exempt occasional sale.

The landlord did not locate buyers, negotiate the terms of the sale, receive a commission, or have actual possession of the equipment at the time of the sale. He was merely protecting his secured interest in the property. He was not a consignor selling through the tenant. The tenant was selling equipment which was owned by the tenant but subject to a lien in favor of the landlord. 11/2/93.

185.0205 Mall Operators. When a mall operator has a consistent policy of requiring all dealers who sell on the premises to have all their sales processed by the mall operators central cashier, the mall operator is deemed to be the “retailer” of all sales at the mall. The mall operator is the party that transfers title of the property to the customer upon payment of the purchase price and, therefore, is the “broker” of all such sales made. The operator must report all such sales made on his or her sales tax return and pay the tax owed directly to the Board. The sales tax reimbursements may not be turned over to the dealer on such sales. However, if the mall operator fails to make a return and pay the sales tax owed to the Board, the dealers are responsible for securing permits, filing returns and paying tax liability themselves pursuant to Regulation 1699(c).

If the mall operator permits the dealers to sell goods directly to the customers or has a central sales location but its use is optional with the dealers, the mall operator is subject to the provisions of Revenue and Taxation Code sections 6073 and 6073.1. As such, the mall operator will be held liable for the tax due on sales processed by the dealers at their booths only if the dealers fail to report and pay the tax and the dealers have not been issued individual seller’s permits. 5/5/93.

185.0250 Photography. A photographer contracts with an agency to serve as the photographer’s representative in connection with the syndication and sale of stock photographs. All original photographs provided to the agency shall remain the photographer’s property. The agency has the right to set terms and conditions of all syndication’s and sales of the stock photographs. The agency shall receive 50% of all monies received by the agency on account of syndication’s or sales of the stock photographs.

Based on this information, the agency is a consignee of the photographs and is responsible for reporting and paying the sales tax on its retail sales of photographs. 7/1/92.

185.0260 Power to Transfer Title—Action by Consignor. A purchaser wishing to purchase consigned property held by the consignee signs an agreement containing the following provisions:

(1) The buyer shall purchase the property from the owner (consignor) and the consignee shall establish an escrow account to complete the exchange of the purchase funds and transfer documents.

(2) The owner shall, by a specified date, deposit into escrow a bill of sale drawn in favor of the buyer, and the buyer shall deliver into escrow the balance of the purchase price by cash or check made payable to the consignee as trustee.

(3) The funds will be placed in an escrow account but need not be segregated from other funds held by the consignee.

In the consignment agreement, no sale is deemed final until such time as the owner/consignor authorizes the release of the bill of sale to the buyer.

Whether the consignee is the retailer is a close question since, at some point, the consignee does have the power to cause title to be transferred to a third person. The critical question, however, is whether the consignee has such power “without any further action on the part of the owner.” (Regulation 1569.) The consignee does not have the authority to pass title until he receives a bill of sale and authorization from the owner. Therefore, the consignee does not have the power to cause title to be transferred without further action on the part of the owner. Thus, the consignee is not the retailer of the property. 9/2/93.

[185.0325](#) **Seller.** A taxpayer operates a catering house, making wholesale sales to catering truck owners. The trucks are parked on the taxpayer’s premises overnight, during which time the propane tanks are filled by a vendor of such fuel. An invoice indicating meter readings and the gallonage used is placed on the windshield of each truck. The taxpayer is given a copy of the invoice and collects the amount due for the fuel along with the amounts due for the food, etc. The taxpayer does not report the sales of propane, but passes the collections on to the propane supplier, less, by pre-agreement, ten cents a gallon.

A seller is the person who has authority to pass title to goods being sold, to set the price at which it will be sold, to issue billings, and to exercise control over the goods until they are sold. In this case the taxpayer had none of this authority. It merely collected the amount due from the drivers for the fuel company in exchange for a pre-agreed fee-per gallon. The catering house operator is not the seller of the fuel. 9/27/91.

[185.0350](#) **Service Station Operators.** A service station operator has the power to hire employees and receive commissions or a flat fee with respect to sales of gasoline. The operator applied for and received a seller’s permit in his own name. A different entity held the lease on the premises and owned the gasoline until it was sold. The operator is regarded as a consignee of the gasoline and is liable for tax on the sales of gasoline. The operator had the power to transfer title and held the seller’s permit. 11/28/90.

[185.1000](#) **Use Tax Paid to Yacht Broker.** Use tax was charged and collected by a yacht broker (holder of a seller’s permit) on a sale of a yacht (documented vessel) in which the yacht broker was a true broker and not a retailer of the yacht. The individual who owned the yacht and actually made the sale did not hold a permit for the sale of vessels.

In such a case, the purchaser is required to report and pay the use tax measured by the sales price directly to the Board. However, when money is collected by a broker (a retailer from a purchaser) under representation that it is payment of tax, that money constitutes a debt owed to the state by the broker. Hence, the Board could seek payment from the yacht broker for the money he collected from the purchaser. If any such amounts were collected from the broker, they would be applied to the purchaser's liability for use tax. (Section 6204.) 12/4/95. (Note: Subsequent statutory change, effective January 1, 1996. See sections 6202 and 6283.)