

545.0000 “TAX-PAID PURCHASES RESOLD”—Regulation 1701

545.0007 Ambulance Sold by City before Use. A city purchased three ambulances which it could not use due to an adverse court decision. Subsequently, the city sold the ambulances to an independent ambulance service.

Since the city resold the ambulances before use, the city may take a deduction for tax paid purchases resold on its return if the City is a retailer and has a sufficient tax liability to claim a deduction. If it is unable to claim the deduction on its return, the vendor who sold the ambulances to the city could file a claim for a sales tax refund with the Board on the ground that the City resold the ambulances before using them. The vendor must then reimburse the city for sales tax reimbursement paid to the vendor. 9/30/94.

545.0010 Brokerage Sales of Vehicles. An automobile broker, who is a licensed dealer under section 285 of the Vehicle Code, is in the business of finding cars for customers at franchised dealers and then selling them to its customers. On occasion, dealers require the broker to pay sales tax and register the vehicle in the name of the broker.

Under this scenario, the broker may take a “tax-paid purchase resold” deduction if it makes no use of the vehicle prior to selling it to its customer. 11/25/91.

545.0012 Chemical Toilets. A lease of a chemical toilet is always a taxable continuing sale and purchase, and the lessor may not avoid this by paying tax or tax reimbursement on purchase price. If the lessor does pay tax or tax reimbursement on purchase price and leases the chemical toilets without making any other use of them, the lessor may take a tax-paid resold deduction. 7/19/96.

545.0013 Claimant as Successor in Interest. A group of entities were participants in an oil drilling operation. One of the participants, A, was the operator of this joint drilling operation. Equipment was purchased from out-of-state suppliers on which A paid the use tax. This tax and other operating costs were passed on to the participants prorated based on their respective interest in the operation.

B, not a retailer, became the successor in interest to A, a retailer. A substantial amount of the equipment was never used and was later sold at an auction. B does not qualify to obtain a refund for tax-paid purchases resold since B is not a retailer and, pursuant to Regulation 1701, the person claiming the refund must be a retailer.

B may be the successor in interest of an agent for the participants in the drilling operation for other purposes. However, that fact does not cause it to have the ability to replace A as a retailer in the state of California. A person may do by agent any act which he might do himself. Thus, an agent is limited to acts which its principal might otherwise do. In order to qualify for the refund, the person claiming the refund must be a retailer. If other participants could qualify for a refund on their own as retailers, then B could act on their behalf and claim a refund. If only a portion of the participants qualify as retailers, then only the pro-rata portion of the credit may be refunded. 7/20/93.

545.0018 Equipment Resold Prior to Use. A manufacturer who holds a seller’s permit purchases equipment to be used in its manufacturing operations. Sales tax reimbursement was paid to the vendor with respect to the equipment. The manufacturer intends, prior to any functional use, to resell the equipment to a California lessor who holds a seller’s permit. The lessor will lease the equipment back to the manufacturer.

The equipment has been installed and is currently undergoing characterization (defining each machine’s processing capabilities) and final acceptance testing. This shakedown/testing process is necessary to assure proper installation and operability to the manufacturer’s specifications. The equipment cannot be used for production purposes until characterization and acceptance are completed.

The manufacturer plans to report tax on the transaction and collect sales tax reimbursement from the lessor.

Since no functional use of the equipment has yet occurred, the manufacturer may claim a tax-paid purchases resold deduction on its return filed for the period in which the equipment is resold. (Regulation 1701.) 10/29/90.

545.0019 Hospital Charges to Patients. Charges to patients for items of tangible personal property which either are not “administered” or for which a separate administration charge is made constitute retail sales. This is the case whether the payments made are based on the specific amount of service or quantity of property provided or a “flat rate” based on a pre-approved schedule of services (e.g., a per capita rate, a per diem rate, etc.).

In instances where the hospital provides administration of property and no separate charge is made, the hospital is the consumer.

If the hospital maintains a tax-paid inventory, a tax-paid purchases resold deduction is allowable in cases where the hospital makes a separate charge for nonadministered items or makes a separate charge for administration of administered items.

In those instances where billings to insurance companies are subject to a “contract allowance” whereby it is understood that the amount paid will be less than the amount billed, the unpaid amount is a discount to be taken at the time of the transaction, not a bad debt to be taken later. 5/23/88. (Am. 2006-1).

(Note: Changes to Regulation 1503, effective June 1, 2001, replaced the “administered vs. nonadministered” concept with the new procedures specified in subdivision (b)(2).)

545.0019.550 Mandatory Warranty. A taxpayer who repairs customers’ tape drives under mandatory warranties purchases spare parts tax-paid. When the taxpayer receives a defective tape drive from a customer, it may repair and return the identical drive to the customer or may send the customer a replacement drive. When a replacement drive is sent, the taxpayer will repair the defective drive and place it in its inventory for future use.

While the taxpayer may take a tax-paid purchases resold deduction with respect to the property purchased tax-paid and incorporated during a mandatory warranty repair, it may only do so with respect to the property incorporated during the current repair. With respect to items returned to the taxpayer and repaired more than once, the taxpayer may take a tax-paid purchases resold deduction only with respect to the purchase price of tax-paid property incorporated during the current repair session. 11/19/97. (M99-1).

545.0019.775 Property Resold in Taxable or Nontaxable Transaction. Taxpayers are permitted to take a tax-paid purchases resold deduction, if otherwise appropriate, notwithstanding the fact that the specific property as to which sales tax reimbursement or use tax was paid is not sold in a taxable retail sale, so long as it is resold without use. The sole criteria is that the taxpayer must have some taxable measure whether sales tax or self-accrued use tax, or otherwise, against which a deduction may be taken. A net refund is not permitted.

If a taxpayer is unable to take the tax-paid purchases resold deduction, the amount is subject to refund to the taxpayer’s vendor by way of a claim of refund by the vendor, if the sale to the taxpayer is treated as a sales tax transaction by the vendor, or by way of a claim for refund by the taxpayer, if the taxpayer self-reported use tax on the acquisition of the property. 6/24/96.

545.0020 Rate of Tax—Change in. Contractor purchasing fixtures tax-paid during 2½ percent rate but installing them (selling them) during 3 percent rate must pay tax on sales price at 3 percent, being entitled to credit for tax paid on the purchase of only 2½ percent. 6/22/50.

545.0040 Rental Use of Property. The leasing of equipment by a vendee after original tax-paid purchase, constitutes a use of such property and precludes the allowance of a credit for tax-paid purchases resold upon a subsequent sale of the property by the vendee to the lessee. 4/20/55.

[545.0048](#) **Sales from Inventory of Spare and Replacement Parts.** A manufacturer maintains a tax paid inventory of spare and replacement parts. The manufacturer is allowed to take a “tax paid purchase resold” deduction when such spare and replacement parts are sold. Spare and replacement parts in the manufacturer’s stores inventory are not considered to be in “standby service” as set forth under Regulation 1701(c) which precludes a tax paid purchase resold deduction from being taken. 10/20/83.

[545.0052](#) **Sales from Spare Parts Inventory.** An airline maintains a tax paid spare parts inventory from which sales are regularly made. In this situation, the spare parts have not been committed to “standby service” as set forth under Regulation 1701(c) and a deduction for “tax paid purchases resold” is allowable. 5/2/78.

[545.0060](#) **Stand-By—Fuel Oil.** Fuel Oil purchased either to be used as an alternative to natural gas during times of increased demand for natural gas or to be resold if not so used is not used for stand-by purposes as contemplated by Regulation 1701. Accordingly, a deduction for tax-paid purchases resold is available if the fuel subsequently is sold because a sufficient supply of the fuel oil is on hand. 8/2/89.

[545.0070](#) **Tax Paid Purchases Resold Deduction Exceeds Tax Liability.** Where the taxpayer’s tax paid purchases resold deduction would exceed its tax liability, the deduction is limited to the amount of the taxpayer’s tax liability under Regulation 1701. In this case, the taxpayer would be required to request its vendors to file claims for refund, since a refund is restricted to the person who paid the tax to the Board. Any refund paid to the vendors in this type of situation would be conditioned upon payment by the vendor to the person who paid the tax reimbursement to the vendor. 2/2/82.

[545.0200](#) **Transfers by Co-Owner.** Transfer of property to an out-of-state project by a co-owner of the project is not a sale. Therefore, the transferor is not entitled to take a tax paid purchase resold deduction. 5/21/71.