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State Controller

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Executive Director

January 23, 2009

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the February 3, 2009 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1668, *Sales for Resale*.

Action 1 on the Agenda concerns revising Regulation 1668 to clarify the documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Business Taxes Committee" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual, and a materials preparation and review schedule arranged according to subject matter and meeting date.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m.** on **February 3, 2009** in Room 121 at the address shown above.

Sincerely,

Randie L. Henry, Deputy Director
Sales and Use Tax Department

RLH: caw

Enclosures

cc: (all with enclosures)

- Honorable Betty T. Yee, Chairwoman, First District (MIC 71)
- Honorable Judy Chu, Ph.D., Vice Chair, Fourth District
- Honorable Bill Leonard, Member, Second District (MIC 78)
- Honorable Michelle Steel, Member, Third District
- Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel
- Mr. Alan LoFaso, Board Member's Office, First District
- Mr. Gary Qualset, Board Member's Office, First District
- Ms. Mengjun He, Board Member's Office, First District
- Mr. Steve Shea, Board Member's Office, Fourth District



Mr. Lee Williams, Board Member's Office, Second District
Mr. Ken Maddox, Board Member's Office, Third District
Mr. Neil Shah, Board Member's Office, Third District
Ms. Elizabeth Maeng, Board Member's Office, Third District
Mr. Keith Chatrapachai, Board Member's Office, Third District
Ms. Christina Rueck, Board Member's Office, Third District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Mr. Ramon J. Hirsig
Ms. Kristine Cazadd
Ms. Randie L. Henry
Mr. Jeff Vest
Mr. Randy Ferris
Mr. David Levine
Mr. Robert Tucker
Mr. Tim Treichelt
Mr. Andrew Kwee
Mr. Todd Gilman
Ms. Lauren Simpson
Mr. Robert Ingenito Jr.
Mr. Bill Benson
Ms. Freda Orendt
Mr. Stephen Rudd
Mr. Kevin Hanks
Mr. James Kuhl
Mr. Geoffrey E. Lyle
Ms. Leila Hellmuth
Ms. Cecilia Watkins
Ms. Lynn Whitaker

AGENDA — February 3, 2009 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1668, *Sales for Resale*

Action 1 — Regulation 1668 – *Sales for Resale*
Documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale

Issue Paper Alternative 1 – Consent Item
Agenda Page 2

Issue Paper Alternative 2

Approve and authorize to publish the proposed revisions as agreed upon by staff and interested parties. The amendments would:

- Clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase “for resale” and may include comparable terminology such as “not taxable.” The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller’s sale for resale transaction.

OR

Do not revise Regulation 1668.

**AGENDA — February 3, 2009 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1668, Sales for Resale**

Action Item	Staff and Interested Parties' Proposed Regulatory Language
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<p>Action 1 — Consent</p> <p>Documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale</p>	<p>Regulation 1668, Sales for Resale</p> <p>...</p> <p>(b) FORM OF CERTIFICATE.</p> <p>...</p> <p>(2) A document containing the essential elements described in paragraph subdivision (b)(1) above is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.</p> <p>(3) <u>Blanket Resale Certificate:</u> If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.</p> <p>(4) <u>Qualified Resale Certificate:</u> If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether <u>or not</u> the property covered by the order is purchased for resale. or whether tax applies to the order. The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be presumed-assumed that the property covered by that purchase order was <u>not</u> purchased for use, and not for resale and that sale or purchase 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 <u>raw materials produced parts</u> for resale and also for tooling used to produce the parts process the raw materials should specify that the <u>raw materials parts</u> are purchased for resale and that the sale of the tooling is subject to tax.</p> <p><u>The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.</u></p> <p>...</p> <p>(c) GOOD FAITH. In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in <u>subdivision (b)(1)</u> and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.</p>
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Issue Paper Number **08-015**



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Proposed Revisions to Regulation 1668, *Sales for Resale*, Regarding Qualified Resale Certificates

I. Issue

Should Regulation 1668 be revised to clarify the documentation requirements of a qualified resale certificate and purchase order used to support a sale for resale?

II. Alternative 1 - Staff Recommendation

As agreed upon by staff and interested parties, staff recommends that the Board authorize publication of the proposed amendments to Regulation 1668 as illustrated in Exhibit 2. The amendments would clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase “for resale” and may include comparable terminology such as “not taxable.” The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller’s sale for resale transaction.

III. Alternative 2

Do not revise Regulation 1668.

IV. Background

This issue was referred to the Business Taxes Committee (BTC) to clarify whether a sale for resale is valid when the instructions on the resale certificate state “see purchase order” and the purchase order identifies the property is being purchased for resale by using terminology such as “not taxable” or “taxable: no” as opposed to “for resale.” If valid and accepted in good faith, the seller accepting the purchase order combined with a qualified resale certificate will be relieved from the liability for tax if the transaction is later found to be taxable and the liability to pay the tax will rest with the purchaser.

In July 2008, Board staff was instructed by memo that the provisions of subdivision (b)(4) of Regulation 1668 require that a purchase order issued in support of a qualified resale certificate is valid and relieves the seller from the liability for tax only if the purchase order includes the phrase “for resale.” In response to such interpretation, a number of taxpayer representatives and consultants (hereafter referred to as “interested parties”) objected to this policy and questioned whether Board staff consistently followed such interpretation in the past. Interested parties organized meetings with representatives from the Board’s Sales and Use Tax Department and Board Members’ offices to discuss this issue. As a result, the BTC Chair referred this matter to the BTC for analysis and recommendation. Staff met with interested parties on November 25, 2008, to discuss proposed revisions to the regulation and agreed to incorporate additional revisions suggested by the interested parties to bring consensus to the proposal.

Current Law

Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in [Regulation 1668](#). A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller’s permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board looks to the purchaser for payment of any tax due.

If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser.

Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states “see purchase order” in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

FORMAL ISSUE PAPER

Issue Paper Number 08-002

V. Alternative 1 - Staff Recommendation**A. Description of Alternative 1**

Staff proposes amending subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase “for resale” and may include comparable terminology, such as “resale = yes,” “nontaxable,” “taxable = no,” or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1).

Staff further recommends that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase “for resale” or other terminology described above to specify that the property is purchased for resale. (See Exhibit 2.)

Discussion

Unsupported sales for resale continue to rank second on the Board’s list of most frequent noncompliance errors found in audits, surpassed only by untaxed purchases from out-of-state vendors. The initial questioning of a claimed sale for resale by the Board is usually the result of the seller’s failure to have timely, and in good faith, taken a resale certificate from the purchaser that contains the essential elements required by the regulation, or failure to have other documentation on file to support the resale transaction.

Regulation 1668 provides that a valid resale certificate must contain the signature of the purchaser and the date of execution, the name and address of the purchaser, the number of the seller’s permit, and a statement that the *property described in the document is purchased for resale*. At issue is whether a qualified resale certificate that contains all the essential elements required in the regulation continues to be valid when the description of the property refers to a purchase order and the purchase order describing the property uses terms such as “not taxable” in lieu of “for resale.” At the time subdivision (b)(4) regarding qualified resale certificates was incorporated in the regulation in 1977, the Board interpreted it to mean that when a qualified resale certificate is issued, the purchase order must contain the words “for resale” in order for the sale to qualify as a sale for resale and words such as “not taxable” are not sufficient to relieve the seller from liability for the tax. Since that time, the Sales and Use Tax Department has issued policy memos and revisions to its Audit Manual that have appeared to conflict regarding the requirement for the words “for resale” on purchase orders issued in conjunction with a qualified resale certificate.

Staff’s proposed revisions would end any confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase “for resale.” Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. This will limit the purchaser’s ability to claim, later, that the purchase was not intended as a purchase for resale when the purchaser issues a qualified resale certificate and a purchase order that indicates the purchase of that item is not subject to tax. Thereafter, the purchaser will become liable for the tax should the property be used in a taxable manner.

FORMAL ISSUE PAPER

Issue Paper Number 08-002

B. Pros of Alternative 1

- Would provide a bright line test as to who is responsible for the tax due when there is a dispute as to the validity of the qualified resale certificate or related purchase order.
- Would ease a seller's burden to support its sales for resale.
- Would allow purchasers the flexibility to use preformatted purchase order forms to designate that the property is purchased for resale.
- Recognizes that purchase orders are widely used and their style and wording vary considerably as to the language specifying the taxability of a purchase of a specific item.

C. Cons of Alternative 1

- Will require purchasers to be more attentive to their designation of whether an item is purchased for resale (nontaxable) or for their own use.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. This alternative requires the amendment of Regulation 1668.

E. Operational Impact of Alternative 1

Staff will notify taxpayers of the amendments to Regulation 1668 through an article in the Tax Information Bulletin (TIB). Staff will also revise affected publications, manuals, and Board staff and taxpayer training materials affected by this alternative.

F. Administrative Impact of Alternative 1

1. Cost Impact

There will be no additional costs. The workload associated with publishing and distributing the TIB and revising publications, manuals, and training materials is considered routine and any corresponding cost would be within the Board's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

This alternative will ease the seller's burden to support sales for resale and provide the purchasers the flexibility to use existing purchase order formats to designate that property is purchased for resale.

H. Critical Time Frames of Alternative 1

None. Implementation will occur 30 days after approval by the Office of Administrative Law.

FORMAL ISSUE PAPER

Issue Paper Number 08-002

VI. Alternative 2 – No Revisions

A. Description of Alternative 2

Do not revise Regulation 1668.

B. Pros of Alternative 2

The current provisions of the regulation may be viewed by some as being clear without the need for further amendments.

C. Cons of Alternative 2

- Will not ease the seller's burden to support sales for resale, or provide the purchaser with the flexibility to designate the property that is being purchased for resale.
- Will continue the confusion in some cases as to who is responsible for the taxes due if the resale transaction is later found to be invalid.

D. Statutory or Regulatory Change for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

The seller's current burden to support sales for resale will not be eased. The purchaser will not be allowed flexibility in preparation of purchase orders.

H. Critical Time Frames of Alternative 2

None.

Preparer/Reviewer Information

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: January 23, 2009

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

Proposed Revisions to Regulation 1668, *Sales for Resale*, Regarding Qualified Resale Certificates

Alternative 1 – Staff Recommendation

As agreed upon by staff and interested parties, staff recommends that the Board authorize publication of the proposed amendments to Regulation 1668 as illustrated in Exhibit 2. The amendments would clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase “for resale” and may include comparable terminology such as “not taxable.” The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller’s sale for resale transaction.

Alternative 2 - Other Alternative Considered

Do not revise Regulation 1668.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact sales and use tax revenue. Staff’s proposed revisions would clear the confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase “for resale.” Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. If valid and accepted in good faith, the seller accepting the purchase order combined with a qualified resale certificate will be relieved from the liability for tax if the transaction is later found to be taxable and the liability to pay the tax will rest with the purchaser.

Alternative 2 - Other Alternative Considered

There is nothing in the alternative 2 that would impact sales and use tax revenue.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Alternative 2 – alternative 2 does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Robert Ingenito, Jr., Manager, Research and Statistics Section, Legislative and Research Division, and Mr. Jeff McGuire, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of January 23, 2009.

(a) RESALE CERTIFICATE.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and 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 as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. 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. A resale certificate remains in effect until revoked in writing.

(b) FORM OF CERTIFICATE.

(1) 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 following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. 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, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in ~~paragraph subdivision (b)(1) above~~ is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate: If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

(4) Qualified Resale Certificate: If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see

purchase order” in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the property covered by the order is purchased for resale. ~~or whether tax applies to the order.~~ The use of the phrases “for resale,” “resale = yes,” “nontaxable,” “taxable = no,” or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase “for resale” or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be ~~presumed~~ ~~assumed~~ that the property covered by that purchase order was not purchased for use, ~~and not for resale~~ and that sale or purchase 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 ~~produced parts~~ for resale and also for tooling used to ~~produce the parts~~ process the raw materials should specify that the raw materials ~~parts~~ are purchased for resale and that the sale of the tooling is subject to tax.

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

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller’s billing, provides a seller’s permit number to the seller, or informs the seller that the transaction is “not taxable” does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) GOOD FAITH. In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser’s business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) IMPROPER USE OF CERTIFICATE. Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

(e) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY. A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(f) USE OF XYZ LETTERS. A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether tax was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

(g) PURCHASER'S LIABILITY FOR TAX. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

