

475.0000 RESALE CERTIFICATES—Regulation 1668

See also Demonstration, Display and Accommodation Loans of Property Held for Resale.

475.0003 **Acceptance of a Resale Certificate.** A retailer has a policy that limits sales of a particular item to no more than three per customer. Some individuals or businesses bypass the three-item limit by having multiple individuals purchase three items each. The retailer reports and pays sales tax on the sales, and collects sales tax reimbursement from the customers. The individuals or businesses in question subsequently consolidate all the register receipts and submit them along with a resale certificate to the retailer for a refund of the sales tax reimbursement paid. The retailer has properly treated these transactions as retail sales subject to tax and is not required to accept the resale certificate as a result of the subsequent events. If otherwise appropriate, the purchaser may take a tax-paid purchase resold deduction on subsequent sales of the items. 11/17/97. (M99-1).

475.0005 **Acceptance Prior to Change in Regulation.** A resale certificate was issued and accepted in good faith prior to the June 17, 1989, amendment to Regulation 1521(c)(3). The certificate is not invalidated as to contracts completed before that date merely because the amendment was not designated as being of prospective effect only. The Board's reclassification of portable buildings resting in place by their own weight from personal property to improvements to realty cannot create a liability that was extinguished by a resale certificate which was taken in good faith at the time of the sale and prior to the change in the regulation. 4/16/92.

475.0008 **Art Purchased by a Nondealer.** A corporation is engaged in the sales of building material. Its president, a former art student, commenced purchasing early California art for the corporation's account. Artwork purchases were made ex-tax under resale certificates. It was the president's intention to dispose of the existing corporate operation in two or three years and to establish an art gallery featuring early California art as a form of retirement activity. While the president had previously acquired artwork for himself and paid tax thereon, he considered the ex-tax purchases to be true purchases for resale because of his expressed intention to use the corporation to enter the art gallery field at some time in the future. This intention was duly recognized in the minutes of the Board of Directors. The president's practice was to purchase slightly damaged or soiled paintings at bargain prices and to have them restored and cleaned, after which they were stored usually at the president's residence.

More than three years has passed since the first ex-tax purchases of art were made and none of the paintings have been sold. Nor was there a gallery location. Under these circumstances, it was concluded that the ex-tax purchases of art were not purchases for resale because the corporation was not engaged in the business of selling art at the time that it made these purchases. Persons purporting to hold property for resale must be able to prove that they actively engage in business as a seller of such property and have relevant evidence showing such activity. Such evidence includes the number, scope, and character of the person's purchases and sales, evidence of the person's effort to advertise and hold himself out to the public as being engaged in the business as a seller, and the acquisition of necessary local business licenses, etc. 6/16/80.

475.0011 **Automobile Collector.** It is improper to issue a resale certificate for the purchase of an automobile when the retailer/dealer knows at the time of purchase that the vehicle is to be loaned to a museum for display. The property is being purchased for a personal collection and not for resale. 1/28/93.

475.0020 **Burden of Proof.** Where a seller does not have a resale certificate on file he may show by other evidence that the property was resold in the purchaser's regular course of business. This is true even though the purchaser does not have a seller's permit if he has made sufficient sales to be required to hold a seller's permit. 10/6/65.

475.0022 **Carrier Furnished by Purchaser—Leased Rail Cars.** A California taxpayer is selling asphalt to a customer based in Utah. The customer has a valid seller's permit for Utah which is on file in the taxpayer's office. The purchaser does not have a customer base in California and intends to resell the asphalt in Utah. A letter to that effect is also on file in the taxpayer's office. The transportation of the asphalt was arranged by the Utah customer through the leasing of rail cars. The product is loaded into the

rail cars leased by the customer at the refinery located in California. Ownership of the product becomes the customer's at that time.

The property is not delivered to a carrier hired by the purchaser but is instead delivered into rail cars leased by the purchaser, that is, the property is delivered to the purchaser. That delivery takes place in this state. Therefore, the sale does not qualify for the interstate commerce exemption under Regulation 1620.

However, if the purchaser intends to resell the asphalt, the California retailer may accept a valid resale certificate from a purchaser for property delivered in California which is purchased for resale out of state. The certificate must contain the elements required by Regulation 1668(b). If the purchaser does not have a California seller's permit number, the out-of-state permit number must be noted on the certificate. 7/21/95.

[475.0025](#) **Consigned Merchandise.** There is no legal requirement that consignees provide resale certificates to consignors of property. However, in situations where a consignor has purchased items for resale without the payment of tax, a resale certificate given by consignees will ensure that the consignor will not be held liable for tax in consigning the property. Since consignees are not purchasing the property, they may modify the language used in the resale certificate changing the word "purchase" to "taken on consignment" and issue this modified certificate to consignors who may be reluctant to consign merchandise without an accompanying exemption certificate. 5/4/93.

[475.0025.100](#) **Construction Contractor—Issuing Resale Certificate.** A construction contractor may issue a resale certificate to its suppliers when purchasing materials as a fungible, commingled lot, a significant portion of which the contractor intends to resell and a portion of which the contractor will consume, when at the time of purchase the contractor does not know which item will be consumed and which will be resold. For example, materials are all placed in a resale inventory and removed for sale or use as needed. However, if at the time of purchase the contractor knows that certain materials will be consumed in the performance of a construction contract, the contractor may not issue a resale certificate with respect to the materials. The sale to the contractor of such materials is subject to the tax. 8/15/94.

[475.0026.800](#) **Deletion of Tax by Purchaser.** A purchaser issues a blanket resale certificate to a vendor. A subsequent purchase order marked "taxable" is issued to the vendor. Upon receipt of the invoice, the purchaser crosses out the tax reimbursement and returns the invoice to the vendor with a notation that the purchase is for resale. The blanket resale certificate the purchaser issues to the vendor coupled with the "for resale" notation on the returned sales invoice relieves the vendor from liability for sale tax on the transaction. The purchaser is regarded as purchasing the property under a resale certificate. 12/5/89.

[475.0026.875](#) **Delivery in State to Out-of-State Retailers.** An Oregon lumber wholesaler purchases lumber from a California mill, and sells it to an Arizona customer, FOB mill. The Arizona manufacturer has a common carrier pick up the lumber with title passing at the mill. The Arizona customer does not have a California seller's permit, and alleges it does not need one since it makes no retail sales in California.

Under the facts recited, the sale does not qualify as a sale in interstate commerce because there is no contractual requirement between the wholesaler and its customer that the property be shipped to a point out of state. This sale would qualify if the contract required that the lumber be shipped out of state by common carrier, even though the carrier was engaged by the customer.

With respect to the need for a seller's permit, the Arizona customer would need one if it makes any sales in California, even if none of them are at retail. However, if the customer is purchasing the lumber for resale at an out-of-state location, it may issue a valid resale certificate specifying that a permit is not required because no sales are made in California. If such a certificate can be taken in good faith by the seller/wholesaler, the sale is not subject to sales tax, even if the property was picked up at the mill by the customer. 3/15/89.

[475.0026.900](#) **Delivery of Vehicle for Out-of-State Dealer.** An out-of-state new car dealer (not engaged in business in California) sold a vehicle to a company in California for delivery to a winner of a raffle held by the company. The out-of-state dealer ordered the vehicle from the factory which delivered it to

California Dealer A for redelivery to the winner of the raffle. Dealer A was instructed by the company to collect the California sales tax and license fees from the winner.

However, the winner did not want to take delivery of the vehicle. Instead, the winner asked Dealer A to transport the vehicle to Dealer B located in another town. The winner then took delivery of a different vehicle and paid the cost difference to Dealer B. Dealer B collected "sales tax" and license fees on the replacement vehicle and offered the original raffle prize vehicle for sale.

This transaction falls within the provisions of the second paragraph of section 6007. Dealer A is considered the retailer of the vehicle it delivered and it owes sales tax on that sale. Dealer A may collect sales tax reimbursement if the contract so provides. The company who purchased the vehicle may be able to obtain payment from the winner for taxes it pays as a result of its contract and rules of the raffle. In any case, the Board will look to Dealer A for payment of the sales tax on the transaction.

Dealer A does not make a sales for resale to Dealer B. The winner's purchase of a more expensive vehicle is nothing more than a car purchased with a trade-in. Dealer B will be obligated to pay sales tax on the sale of the replacement vehicle. 9/23/96.

475.0027 Description of Property to Be Purchased. A resale certificate issued to a seller of electrical supplies which describes the property to be purchased as "electrical equipment or supplies" and "electrical supplies" was intended to have a broad meaning and includes all electrical items purchased from the vendor including "materials" and "fixtures" as these terms are defined under Regulation 1521. 4/20/88.

475.0028 Drop Shipments. A taxpayer makes sales to an out-of-state corporation which is not engaged in business in California. The out-of-state customer directs that goods be drop shipped to California entities. The taxpayer is deemed the retailer under section 6007 unless the California customer is purchasing the property for resale. The taxpayer is not relieved of liability for tax by its acceptance of a resale certificate from the out-of-state retailer that lacks a valid California seller's permit number. The taxpayer will be relieved of liability for tax, however, if it accepts a timely valid resale certificate in good faith from the California customer of the out-of-state retailer. 12/14/93.

475.0035 Erroneous Information on Certificate. A purchaser issued a resale certificate which contained what appeared to be legitimate entry in each part of the certificate and which certificate was accepted in good faith by the seller. The purchaser cannot use as a defense that the resale certificate is defective because it contained incorrect information to relieve him of the responsibility to pay use tax if the property is not resold. 1/25/91.

475.0037 Essential Elements of Resale Certificate. An out-of-state retailer sold equipment to a California consumer. Three and a half months later, a leasing company notified the out-of-state retailer that it had purchased the equipment that the out-of-state retailer had sold to the California consumer as part of a leaseback transaction. The leasing company issued an exemption certificate which stated the property was purchased from the out-of-state retailer "exclusively for the purpose of leasing."

The exemption certificate is not a valid resale certificate because it was not issued by the party who purchased the equipment. Further, the certificate was not issued timely and did not indicate that the property was purchased for resale. 9/29/88.

475.0038 Essential Elements of Resale Certificate. An out-of-state lessor purchases equipment from an out-of-state retailer for shipment to Corporation A, a California consumer. Corporation A issues a document to the out-of-state retailer that states "Corporation A is engaged in a sale and leaseback program and is exempt from California sales tax on specified equipment. California Exemption (sales tax permit number shown)."

Since the property is sold to the lessor, not the lessee, the document is not issued by the purchaser of equipment, the lessor. Also, the document does not satisfy all of the five essential elements of a valid resale

certificate set forth in Regulation 1668. It is not acceptable as a resale certificate. The retailer bears the burden to establish that the property was resold. 9/29/88.

[475.0039](#) **Exemption and Resale Certificates.** Construction contractors are sellers of fixtures and may purchase fixtures for resale regardless of whether the contractor intends to install the fixtures or to resell them to another contractor for installation by the other contractor.

Construction contractors are consumers of construction materials which they furnish and install. Contractors may issue resale certificates when purchasing materials only when they will actually resell a significant portion of them and at the time of purchase they do not know which items will be consumed and which will be resold.

Sales of construction materials intended to be used on out-of-state construction projects may be purchased under a timely exemption certificate pursuant to section 6386 by a holder of a seller's permit. A resale certificate should not be issued in this situation because the materials will not actually be resold. 7/5/94.

475.0040 **Fabrication Labor.** Resale Certificates given for fabrication labor performed on customer furnished material should be treated the same as resale certificates given for tangible personal property purchased for resale. Accordingly, if the material upon which the fabrication labor is performed is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, such use is taxable. 12/18/56.

[475.0045](#) **False Information on Certificate—Use Tax Liability.** A resale certificate, regular on its face, taken in good faith from the buyer by the seller, which later proves to have false information regarding one or more of the five required elements described in Regulation 1668(b), relieves the seller from liability from the sales tax. The purchaser is liable for use tax on the theory that the property was purchased under a resale certificate. A dual determination should not be issued to the seller. 9/24/86.

475.0050 **Fax-Facsimile Transmissions.** A FAX transmission contains sufficient indication of authenticity, e.g., telephone number of sender, date and time of transmission—to be acceptable in place of the original document. In recognition of current business practice as modified by advances in technology, faxed copies of resale certificates provided in support of nontaxable sales for resale will be administratively accepted. A faxed resale certificate will be considered valid only if the certificate contains the information required by Regulation 1668. The faxed resale certificate must also contain, either on the document itself or on the standard cover sheet, the date and time of transmission and the telephone number of the sender. 12/10/90.

475.0055 **Federal Firearms License.** A federal firearms license does not qualify as a resale certificate even though this license, combined with a copy of a seller's permit, contains all the essential elements specified for a resale certificate. Regulation 1668 not only requires that the purchaser hold a seller's permit, but also that the writing, within the certificate, expressly recite that the purchase was "for resale." Although the federal regulatory act requires the purchaser to be a "dealer," it cannot be implied that the property was in fact purchased for resale. 4/20/90.

[475.0057](#) **Fungicide Removed During Manufacturing.** A firm applies a fungicide to lumber. It surfaces the lumber and, in the process, it removes all of the fungicide. The shavings from the surfacing process which contain the fungicide are sold. The primary purpose of the fungicide is to protect the lumber during the manufacturing process. The sale of the fungicide to the manufacturer is subject to tax even though the fungicide may remain in shavings which are sold. 5/8/97.

475.0058 **Gas Ranges—Sales By Builder of Apartment House.** Free standing gas ranges/ovens may be sold for resale to the builder of an apartment house who will resell the ranges and the apartment house upon completion. It is immaterial that the seller of the ranges may install them in the appropriate place within each apartment. The builder should issue a proper resale certificate in a timely manner, as prescribed in Regulation 1668. In the absence of a proper certificate, the sale would be presumed to be a retail sale

pursuant to section 6091 of the Sales and Use Tax Law, unless other evidence is submitted to show that the item was resold.

“Built-in” ranges and ovens, on the other hand, are either fixtures or materials and their sale and installation are governed by Regulation 1521. The regulation provides that the contractor who furnishes and installs such items is the consumer of materials and the retailer of fixtures. The installing contractor does not make a sale for resale and may not accept a resale certificate for such items. 8/23/60.

475.0060 Gift Items. An out-of-state supplier, with nexus in California, sells gift items such as TV’s , VCR’s, and sailboats to banks in California. The banks give the items away to depositors in lieu of interest.

A transfer of tangible personal property by the banks in lieu of a cash transfer of interest constitutes a retail sale of such property. The forfeiture of cash payments constitutes the consideration for the transfer of the property. 12/19/89.

475.0062 Good Faith. When a company sells property to a person who is in the business of reselling that type of property and who issues the company a resale certificate, the company would be regarded as accepting the certificate in good faith unless it had specific knowledge that the purchaser was not reselling the property. On the other hand, if the sale is to a person who is not in the business of selling that type of property, the company’s good faith in accepting a certificate from that purchaser may be subject to some doubt. 6/24/91.

475.0065 Good Faith Acceptance of Certificates. Vendors are expected to exercise reasonable judgment with respect to accepting resale and exemption certificates in good faith. If the property sold is in the opinion of the vendor and from the vendor’s experience of a type that would ordinarily be consumed or used in a nonexempt manner, the vendor’s good faith acceptance of a certificate may be questioned. 5/23/75.

475.0069 Holding Property for Appreciation in Value. Paintings were purchased with the hope of realizing a profit by their eventual sale rather than with the intent of making them part of a permanent collection. The paintings were of doubtful origin and did not have currency in the market. The purchaser hoped to make them profitable and salable in the future by collecting attributions for them which would establish an increased value. Thus, the paintings could not be considered part of the purchaser’s stock in trade held for resale in a regular course of a business. In arriving at this conclusion, it was noted that the purchaser never made three sales during any twelve-month period. In fact, no sales were made during this period. Thus, resales of paintings were not part of the regular course of business during the audit period.

Accordingly, it was concluded that the paintings were purchased for a purpose other than, or in addition to, a resale in the regular course of business. While there is nothing illegitimate in holding property with the hope that it increases in salable value, purchase of it does not qualify as a nontaxable purchase for resale. 4/18/69.

475.0073 Improper Use of Resale Certificate. A taxpayer is engaged in the business of oil exploration, an activity involving the use of a great variety of electronic equipment. The taxpayer gave a resale certificate for the purchase of such equipment and claimed exclusion from the use tax under section 6009.1 because of subsequent shipment and use of the property outside the state. The taxpayer defended the issuance of the certificate on the basis that at the time of purchase it was not known whether any particular item would be resold or used. However, since less than 2% of the purchases were resold, and even these sales were made to related foreign corporations, the argument is specious. The property could not realistically be said to have been purchased for “resale in the regular course of business.” Under these circumstances, the issuance of the resale certificate in an attempt to create a use tax exclusion under section 6009.1 is a misuse of the certificate. The purchases are subject to tax. 2/11/72.

475.0080 Intent of Purchaser. Where a firm purchases merchandise ex-tax under a resale certificate and then later gives the merchandise away, as, for example, Christmas gift, it is liable for the tax; however, a

resale certificate may be validly given only if, at the time of purchase, there is no intent to use the property for such purposes. 1/20/61.

475.0100 **Intent of Purchase.** A jobber who wishes to purchase materials for his own consumption may not issue a resale certificate for such purchases. The provisions of sections 6092 and 6094.5 are applicable, even though a manufacturer refuses to sell to a person except upon condition that he issue a resale certificate. 1/27/59.

[475.0103](#) **Invalid Certificate.** The fact that a resale certificate was not timely and failed to show the buyer's seller's permit number does not necessarily make the transaction taxable. A valid certificate relieves the seller of the burden of proof that the sale was not at retail. An invalid certificate makes it necessary for the seller to provide specific evidence that the sale was not at retail. Failing to do so makes the sale taxable under the presumption in section 6091.

A seller negotiates a sale to a research facility who will resell the item to the U.S. Government, but the seller is instructed to invoice the sale and pass title to a finance company who issues a late and incomplete resale certificate to the seller. The sale to the finance company was a valid sale for resale since the finance company sold the item to the research facility without prior use and the finance company has sufficient documentation to show this. 7/25/88.

[475.0105](#) **Invalid Permit Number.** A taxpayer began charging a customer sales tax when it learned that the permit number shown on its resale certificate was no longer valid. The customer is now requesting a refund from the taxpayer of the sales tax reimbursement charged.

A resale certificate operates to relieve the seller from liability for sales tax if taken: (1) in good faith, (2) from a person who is engaged in the business of selling tangible personal property, and (3) from a person who holds a valid seller's permit. If the taxpayer had been issued a resale certificate by a customer during the period the customer did not have a valid seller's permit, the buyer could not have issued a valid resale certificate. Therefore, any sales to it would be presumed to be at retail until established otherwise. There is no provision for curing a resale certificate issued during a period in which the purchaser did not hold a valid seller's permit by back dating a seller's permit. However, if it could be proven to the satisfaction of the Board that the specific property was in fact resold by the purchaser and was not used by it, the taxpayer would be entitled to a refund of the taxes paid on those sales, provided that such amounts are returned to the customer. 2/21/95.

[475.0112](#) **Liability for Sales Tax.** The failure to take a timely resale certificate for the sale of tangible personal property in California makes the seller liable for the payment of sales tax regardless of any written statements subsequently obtained from the buyer alleging his resale of the property without prior use or alleging his self-reporting and payment of the use tax on the purchase, if such statements are found to be false. The making of such statements does not make the buyer liable for use tax unless the applicable tax was use tax in the first place, and then the buyer would be liable regardless of whether or not such statements were made. 1/10/78. (Am. 2002-2).

475.0120 **Order Blank,** to constitute valid resale certificate, must contain all the elements of such certificate. 12/10/52.

475.0140 **Out-of-State Dealer Issuing.** A California dealer may properly accept a resale certificate from a Mexican dealer for a vehicle delivered to the Mexican dealer in California and driven by the Mexican dealer for no purpose other than to get the vehicle to the Mexican dealer's place of business for purposes of selling it. 5/10/65.

[475.0159](#) **Out-of-State Use.** A person may not issue a resale certificate to purchase property in this state for the purpose of transporting the property outside the state and claiming the exclusion from "use" provided by section 6009.1. The exclusion contained in section 6009.1 applies only to transactions governed by the use tax. Purchases of items in California known at the time of purchase to be for use albeit

out of state, under an improperly given resale certificate, are not covered by the exclusion. The exclusion does apply if at the time of purchase it is not known whether the property will be used or sold. 6/9/60.

475.0164 Photographic Stock House. A photographic stock house has images on loan from contributing photographers who grant the stock house permission to act as their agent in leasing their photographs for advertising and editorial usage. In some cases, the stock house does not have on file a photograph sought by its customer. The stock house will go to another stock house for the photographs and submit these photographs to the customer. If the customer leases the photograph, the stock house inquires as to how these transactions should be handled for sales and use tax purposes.

The stock house should issue a resale certificate to the other stock house. This latter stock house does not need to report, pay, or collect tax on the transaction. Rather, the stock house issuing the resale certificate should report and pay tax on the full charge made to the customer. Tax is due only at the retail level computed upon the retail price. 2/10/87.

475.0166 Property Purchased from. A resale certificate is valid even if the “Property purchased from” section shows the vendor’s business’ fictitious name. 4/20/88.

475.0168 Property Purchased for Resale. A sale is for resale only if the tangible personal property is purchased for the purpose of resale in the regular course of business without prior use. Property which, as a result of the nature of its use, incidentally becomes a component of another article which is resold should not be purchased for resale. For example, portions of certain chemicals used in the film developing process may adhere to the developed negative or print because the action of the wash or rinse is less than perfect. These chemicals do not become items purchased for resale simply because, after their intended use, some portion remains with the finished product. 1/31/72.

475.0168.165 Purchase of Meals by Government Contractor. As a result of the decision in *Aerospace v. State Board of Equalization* (1990 218 Cal.App.3d 1300), a government contract may treat indirect costs, such as overhead expenses, properly allocable to its government contracts as purchases for resale to the United States if the government contract involved contains appropriate title passage clauses. A restaurant may sell meals ex-tax to a government contractor if the contractor issues a valid and timely resale certificate which includes a statement that the specific property is being purchased for resale to the Federal government, pursuant to the contract and in the regular course of business.

(Note: the sale must be to the contractor and not merely to employees of the contractor who receives expense reimbursement.) 11/15/93.

475.0168.180 Purchase Order Supported by Blanket Resale Certificate. A customer issued a purchase order to a printer for the purchase of brochures. The customer attached a resale certificate to the purchase order indicating that four-digit purchase order numbers should be considered nontaxable. In addition, the bottom-line tax portion of the purchase order read “.00” for sales tax amount to be charged.

Subdivision (b)(4) of Regulation 1668 provides that if a purchaser wishes to designate on each purchase order that the property 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 the property covered by the purchase order is purchased for resale or whether tax applies to the orders. If the purchase order does not so specify, it will be assumed that the property covered by the purchase order was purchased for use and not for resale.

In this case, the purchase order did not specify whether the property covered by the purchase order was purchased for resale or whether tax applied to the order. Therefore, the sale is not covered by the resale certificate and is subject to tax unless the printer establishes that the purchaser resold the brochures along with its products. 7/11/96.

475.0168.185 Purchases of Light Rail Vehicles Not Qualifying for Exemption from Tax. A taxpayer wants to purchase vehicles for use as light rail transportation. Taxpayer has purchased a rail line and

simultaneously granted back to the seller the exclusive right to use that rail line. The taxpayer does not currently provide commuter rail service on or over the rail line it allegedly purchased from the seller. Taxpayer claims that its purchases of light rail vehicles are exempt from sales tax under the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) and taxpayer should be allowed to issue exemption certificates to its vendors for these purchases.

Revenue and Taxation Code section 6352 provides an exemption for sales of tangible personal property that California is prohibited from taxing under the laws of the United States. The federal law at issue, the 4-R Act, was interpreted by the Board in the memorandum opinion of *Bombardier, Inc.* (Sept. 1, 1999) hereafter *Bombardier*.

In *Bombardier*, the Board held that the 4-R Act's protection from discrimination operates on behalf of commuter rail carriers operating on portions of the interstate rail system inside California because such commuter rail carriers are "subject to the jurisdiction" of the federal Surface Transportation Board (STB). Under the Board's holding in *Bombardier*, a rail carrier cannot qualify for a "4-R Act" exemption under section 6352 unless, among other things, the rail carrier seeking the exemption is operating on a portion of the interstate rail system that is subject to the jurisdiction of the STB.

Taxpayer has not established that it is a rail carrier subject to the jurisdiction of the STB nor that it is currently providing commuter rail service on and over the rail line it purchased. The documentation provided by the taxpayer merely provides that it might at some future date be able to operate as a commuter rail service on and over that particular rail line it purchased from the seller under certain circumstances. Therefore, taxpayer should not issue exemption certificates to its vendors of light rail vehicles. 1/26/04. (2005-2).

475.0168.190 Purchaser's Liability for Sales Tax Reimbursement. A purchaser owes the seller sales tax reimbursement for the seller's sales tax liability if their contract of sale so provides. When a purchaser issues a document intended to be a resale certificate in order to avoid paying sales tax reimbursement, it is clear that, but for that document, the seller would have collected reimbursement from the purchaser. Thus, when such a document is not a valid resale certificate and the seller is held liable for sale tax, the seller is entitled to collect reimbursement from the purchaser for that sales tax liability. In order to avoid having to pay the seller such reimbursement, the purchaser must provide the seller sufficient documentation that the purchaser resold the property without use, such that the seller can carry its burden with the Board of establishing that its sales were actually for resale. 5/16/97.

475.0168.800 Refusal to Accept a Resale Certificate. An out-of-state firm purchases property which it uses to manufacture a spa. It picks up the property in California with its own trucks. The California seller refuses to accept a resale certificate from the out-of-state firm.

A seller is not required to accept a resale certificate. If, for example, it had reason to believe that spas were being sold and delivered by the out-of-state firm to California buyers, it could refuse unless the purchaser held a California seller's permit. 11/19/93.

475.0169 Resale Certificates. Corporation A, a wholly owned subsidiary of Corporation B, will be merged into B in accordance with applicable statutory merger provisions. A has on file numerous resale certificates issued to it by its customers.

Since B will become a successor to A by operation of law as a result of the statutory merger, new resale certificates need not be obtained. 12/10/87.

475.0169.200 Resale Certificates—Item Consumed and Resold. A California taxpayer distributes name brand eyewear to a network of authorized dealers. All products that it sells are noncorrective through the time of sale and delivery to the dealers. The taxpayer does not provide prescription lenses and does not make, buy, or sell corrective lenses. The eyewear is shipped with either sun or plano lenses. The frames sold with plano lenses may or may not be used for prescription purposes. Some dealers make specialized

sun or safety lenses to be installed into the frame (therefore they purchase the frames with the less expensive plano lenses).

The taxpayer cannot determine which items are to be used by the dealer for corrective purposes and which will not. Often the dealers themselves do not know at the time of purchase.

Under this scenario, a dealer who purchases a lot of items knowing that some will be resold and some consumed but who, at the time of purchase, cannot in good faith determine which specific items will be resold and which will be consumed, may issue its vendors a resale certificate for the whole lot. The buyer would then be responsible for self reporting use tax on the items consumed. 10/17/95.

475.0170 Resale Certificate—Printing Aids. A corporation specializes in the preparation and printing of parts lists and maintenance catalogs. It prepared reproducible copies of illustrated parts and parts lists from which illustrated catalogs were printed. The catalogs were sold to Company B for resale to its customers. For these contracts, the corporation subcontracted with a printer for the actual production of the catalogs. The printer invoiced the corporation for the printing and they in turn, billed Company B.

On later contracts, the corporation did not contract for the sale of the catalogs. Rather it prepared reproducible copies of the catalog and delivered same to the printer designated by Company B. Company B had contracted directly with the printer for the production of the catalogs to be resold. The corporation's responsibility ceased upon delivery of the camera ready or reproducible copies to the printer.

For these later contracts, the corporation had received purchase orders from Company B stating: "For resale. Not subject to California Sales and Use Tax. Seller's Permit Number (permit number given)."

Under these contracts, the corporation retained title to the camera ready art and reproducible copies used by the printer. However, Company B would purchase copies of the camera ready artwork, used by the printer, for ten cents per page.

The furnishing of the camera ready art and reproducible copies by the corporation to Company B were leases subject to tax. The statement on the purchase orders was ineffective, because: (1) the purchase orders with the "For Resale" notation did not call to purchase the camera ready artwork or reproducible copies, only the catalogs; and (2) since the corporation retained title to the camera ready art, and knew the reproducible copies were not going to be resold, it could not accept the certificate in "good faith". 4/12/73.

475.0175 Resales Made Under Predecessor's Resale Certificates. A partnership incorporated using the partnership's business name as its corporate name. The partnership timely informs the Board of its dissolution. The Board cancels the partnership's seller's permit and simultaneously the corporation obtains a new seller's permit from the Board. The partnership during the regular course of business had issued resale certificates that met the requirements of Regulation 1668. The tax consequence of vendors, relying on the resale certificates issued by the partnership, selling extax for resale to the corporation is discussed below.

(1) Since the resale certificates were issued to the vendors by a person other than the current purchaser, those resale certificates would not necessarily relieve the seller of the liability for sales tax. If the corporation resold the purchased property without use and if the vendors could establish this, the vendors would not owe sales tax on these sales to the corporation. (Regulation 1668(c).)

(2) Unless the vendors had knowledge that the partnership that issued the resale certificates was not the same as the corporation making the ex-tax purchases, the integrity of the Sales and Use Tax Law requires the corporation to affirmatively notify the vendors that they may not rely on those resale certificates when making sales to the corporation. Otherwise the corporation will be regarded as having adopted the resale certificates. In such a case, if the corporation uses the purchased property for any purpose other than retention, demonstration or display while holding it for sale in the regular course of business, the corporation will owe tax measured by the purchase price of such property. 2/6/90.

475.0185 Resale Certificate—Unlicensed Entity. A sales contract contained the following statement. “Buyer claims to have a tax resale number (permit number shown). It is understood by the parties that if said number is disallowed by the State Board of Equalization, then buyer agrees to add 5% sales tax to this transaction”. The permit number shown in the contract was not held by the buyer, but instead was issued to a corporation of which the buyer was president. The statement in the contract does not meet the requirements of Regulation 1668 and does not qualify as a resale certificate. 4/9/71.

475.0193 Retailer. A person may be considered a dealer in stamps (i.e., will conduct business as a seller) only if he is engaged in the business of selling stamps in addition to any purchases for investment (consumption) he may otherwise make. Even if he qualifies as a dealer in stamps, he may not issue resale certificates for purchases as an investment (as opposed to purchases in stock and trade). The purchase of a long term investment is a purchase for use, and if the person has issued resale certificates for such stamps, tax must be paid measured by the sales price.

It is clear that a person who purchases stamps with the intention to resell in the ordinary course of business of selling that kind of tangible personal property may, in addition, purchase stamps for consumption. A purchase with the expectation of an eventual resale to realize a gain does not preclude the determination that the purchase was also for storage, use or other consumption within the meaning of the Sales and Use Tax Law.

This conclusion is based on the meaning of holding goods for sale in the ordinary course of business. The “business” of a seller means a business of one whose activity and concern is the distribution and sale of goods. This is in contrast to the business of an investor whose purpose is to hold goods from the market as a store of value. 8/6/65.

475.0200 Returned Merchandise. Use tax applies to the material cost of a manufactured item where the materials are purchased under a resale certificate, and the item is later given away, even though, prior to the gift, the manufactured item is sold, when the sale is rescinded and the item is later returned by the buyer to the seller. 7/28/65.

475.0215 Space Launch Vehicle. Company A is engaged in the business of designing, engineering, and manufacturing, among other items, space launch systems. Company B, a wholly owned subsidiary, is established to market and sell launch service programs to commercial customers. The services include the launch vehicle, launch operation, spacecraft integration, mission management, and post launch validation of spacecraft separation and orbit. Company B contracts with Company A for the purchase of the launch vehicle and for launch services. All contracts between Company B and Company A provide that Company A must deliver title to or possession of the launch vehicle to Company B out of state. All transportation charges are paid by Company A. Company A contracts with the U.S. Air Force to transport the vehicle out of state as no other carrier has the capability to move the vehicle.

Assuming the transaction between Company A and Company B is an arm’s length transaction, Company A may issue resale certificates to its suppliers for property incorporated into the vehicle. Its sale to Company B would be exempt as a sale in interstate commerce. 10/4/93. (Am. 2002–2).

475.0220 Time Limit for Holding Property for Resale. A taxpayer purchases a light aircraft manufacturing kit for the sole purpose of assembling the aircraft and holding it for resale. There are no time limits for the subsequent resale of the aircraft which would trigger a use tax liability against the purchaser so long as it is actually being held for resale and there is no intervening use of the aircraft, other than testing, demonstration, or display prior to the time that the aircraft is sold. 6/30/97.

475.0225 Timeliness. A retailer sells equipment which he/she installs. The customer is allowed to test the equipment for 30 to 90 days and sometimes longer. If the customer does not accept the equipment it is returned to the retailer and the sale is voided. Frequently, the purchaser plans to resell the equipment and lease it back.

A resale certificate is timely, if it is accepted within the normal billing period. If the customer is not billed until after he/she accepts the equipment, a certificate accepted during the billing period is timely notwithstanding that the title may have passed upon the initial installation of the equipment. However, even if taken timely, a resale certificate will relieve a retailer of tax liability only if taken in good faith. It does not appear likely that a company would hold a piece of equipment for thirty to ninety days without making some functional use out of it, such as manufacturing other property. If the retailer has reason to believe that the purchaser will functionally use the equipment prior to the sale and leaseback, the retailer would not be regarded as accepting the resale certificate in good faith. 9/19/89.

475.0228 Timely Issued Certificate. A vendor receives a purchase order from a customer for computer equipment. The equipment is shipped and invoiced to a customer in California. Sales tax is charged on the invoice. Four months after the initial invoice, a lessor contacts the vendor stating that it is leasing the equipment to the customer. The lessor requests that the vendor bill the lessor directly without sales tax for the equipment and that the vendor credit the customer for the initial invoice and sales tax. The lessor sends the vendor a resale certificate dated four months after the original invoice.

Under this scenario, there appears to have been a binding contract between the vendor and the customer for the sale of the equipment to the customer. The customer had a binding obligation to pay the vendor for the equipment. It also appears that the customer sold the equipment to a lessor and leased the equipment back. Under these circumstances, a resale certificate would not relieve the vendor of liability for tax since a certificate, even if issued by the customer, would not be timely. Rather, it must be shown that the customer actually sold the property prior to using it. If the customer did, in fact, resell the property prior to use, it would be entitled to a tax-paid purchases resold deduction with respect to the tax paid vendor. 10/23/89.

475.0236 Resale Certificates—Aerospace Decision. As a result of the decision in *Aerospace Corp. v. S. B. E.* (1990) 218 Cal.App.3d 1300, a government contractor may treat overhead costs as purchases for resale to the United States if the contract contains the title passing clauses set forth in FAR52.232.16(d). The contractor should provide the supplier with a resale certificate containing the statement that the goods are being purchased for resale in the regular course of business. 8/3/92.

475.0238 Sale of Laundry for Resale. A firm purchases a laundry with the intent of selling it. It operates the laundry for six months while it is seeking a buyer. Since the firm intended to operate the laundry while looking for a purchaser, it may not issue a resale certificate for the laundry equipment or opt to report tax on fair rental value on the theory that it is demonstrating and displaying the equipment while holding it for resale. 5/16/97.

475.0240 United States—Resale to—Contractors. A resale certificate is properly given by a vendee when the latter resells to the United States, except as to property used in performing contracts to construct improvements. 12/1/50.

475.0510 Validity of Resale Certificate. A taxpayer sells silk screen inks, supplies, and equipment, including ink thinners. The taxpayer accepts resale certificates in good faith from customers known to be in the silk screen printing industry. In addition to selling inks ex-tax, the taxpayer sold ink thinners ex-tax. Although it may be assumed that the thinners had evaporated before the products to which they had been applied were sold, recognition must be given to the fact that a resale certificate which specifically mentioned thinners was issued by the purchaser and accepted in good faith pursuant to section 6092. Accordingly, it relieves the seller from liability for the sales tax. In this situation, the purchaser, having given the certificates, should be held liable for the use tax on the purchase. 5/8/72.

475.0511 Validity of Resale Certificates. A resale certificate is not valid if the name of the purchaser shown on the certificate is other than the purchaser. Also, the signatures of the purchaser, his agent, or employee of the purchaser must be an original signature and not a photocopy. 3/3/89.

475.0850 XYZ Letter as a Resale Certificate. An XYZ letter is not to be treated as a resale certificate in the sense of relieving the seller from liability for sales tax if taken timely and in good faith from a person engaged in selling tangible personal property and holding a seller's permit. Rather, an XYZ letter is merely

an item of evidence which may help a seller satisfy the burden of proving that a sale of tangible personal property was not at retail, even though a resale certificate was not timely obtained. The acceptance of an XYZ letter as relieving the seller of sales tax is at the discretion of the Board. In that sense, in exercising that discretion, the staff can insist on the good faith of the seller. 3/4/85.

475.0950 Delivery by Authorized Computer Dealers. A computer manufacturer offers an opportunity to employees to purchase personal computer products at discounted prices. Authorized computer dealers may participate in these transactions under agreement with the manufacturer.

Employees may place orders directly with the manufacturer or with participating dealers. A participating dealer, by agreement with the manufacturer, receives orders on the manufacturer's behalf, transfers possession of products that were ordered either at the store or directly from the manufacturer, and is responsible for the satisfaction of the manufacturer's purchases. A "Dealer's Handling Fee" is paid by the manufacturer in connection with the dealer's involvement in these employee transactions.

Purchases may be made by employees on either a cash basis or payroll deduction basis. Cash purchase orders must be placed with participating dealers. Payroll deduction purchases must be placed directly with the manufacturer. Employees must pick up the product ordered under either of the purchase options at the store of the participating dealer.

In situations where orders are placed directly with a participating dealer (cash purchases), a computer is delivered by the dealer out of its stock to the employee. The manufacturer replaces the computer on an item-for-item basis. Cash purchasers remit to the dealer the employee price for the product received plus applicable sales or use taxes. The amount received by the dealer as sales or use tax is retained by the dealer in partial payment of the "Dealer's Handling Fee," and the manufacturer remits to dealer the balance of the handling fee due. The manufacturer timely reports all sales made under this program and pays all applicable sales and use taxes, whether the products delivered through the dealer's store were ordered by employee directly from it or by placing the order at the dealer's store. Title to all products, whether cash or payroll deduction purchases, passes from the manufacturer to the employees at the time of delivery to the employee by the dealer.

In situations where orders are placed directly with the participating dealers (cash purchases), the manufacturer is the retailer and the transaction is subject to sales tax. In the circumstances of this case, it is permissible for the dealer to collect reimbursement from purchases and to account to its principal in the transaction and retain the reimbursement as a credit against the handling fee due the dealer.

In situations where computers are purchased under the payroll deduction plan, the orders are forwarded to the manufacturer's out-of-state plant. The computers are shipped from the out-of-state plant to the participating dealer and are subsequently picked up by the employee. Tax reimbursement amounts are not collected by the dealer. In these circumstances, the manufacturer also is the retailer of the product and the manufacturer is required to collect use tax directly from the purchases and remit the tax to the Board.

In order for the dealer to document the transaction as a nonretailer sale, the dealer should obtain a resale certificate from manufacturer for products which the dealer delivers from its own inventory to the manufacturer's employee purchasers. 3/22/84.