

**SALE (Contd.)**

Upon failure to obtain the contract and without any use being made of the machine, it is resold by the purchaser. Tax refund is in order as resale occurred prior to any use of the machine.

Sales tax applies, however, to the resale of the machine unless it was resold in interstate commerce and delivery effected in a manner qualifying it for exemption under Regulation 1620. 8/12/54.

495.0820 **Changed Intention After Purchase.** A corporation transferred some machinery and equipment to its president in cancellation of an indebtedness. The president placed the equipment in dead storage for more than a year, then resold it in a series of sales sufficient to require the holding of a seller's permit. HELD: The sale to the president was a sale for resale even though the president may not have intended originally to resell the property in the regular course of business. 10/5/64.

495.0840 **Changed Intention After Purchase—Voluntary Disposal Other Than by Sale.** An oil company bought business forms, stored them in the seller's warehouse, and withdrew them from the warehouse as needed. One of its forms became obsolete and the oil company withdrew copies of that form for disposal. The oil company is not entitled to a credit for sales tax reimbursement paid at the time of sale because the law makes no provision for a deduction from tax as the result of a voluntary disposal of tangible personal property by a buyer subsequent to the incidence of the sales tax. 1/28/70.

495.0843 **Deliveries by California Firearm Dealers for Out-of-State Retailers.** California residents order firearms from out-of-state retailers and the retailers ship the firearms to an authorized California firearm dealer for delivery to the customer. The California firearm dealer charges a fee to register each firearm in California.

When the California firearm dealer completes the registration paperwork and delivers a firearm to a California purchaser for an out-of-state retailer not registered with the Board as a retailer engaged in business in this state, it is presumed that the firearm dealer is the retailer of the firearm under the second paragraph of section 6007. In such a case, the firearm dealer would owe sales tax on the total amount of the retail sales price of the gun to the customer, including the Department of Justice fee if passed on to the customer, and including any service charge made by the firearm dealer.

If the firearm dealer establishes to the satisfaction of the Board that the out-of-state retailer was engaged in business in this state under section 6203, its deliveries for that retailer will not be considered taxable retail sales by the firearm dealer, even if the out-of-state retailer has not registered with the Board as a retailer engaged in business in this state. In such cases, as well as in situations in which the retailer is in fact registered as a retailer engaged in business in this state, the out-of-state retailer has a duty to collect the use tax under section 6203. The retailer should collect use tax on the invoice price of the firearm, plus the service fee, even if paid directly to the firearm dealer by the customer. Also, the Department of Justice fee passed onto the customer should be included in the measure of tax. 12/7/95. (Am. 99-2).

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(Note: On and after January 1, 1999, the Department of Justice fee is not includible in the measure of tax, but all other charges remain subject to tax.)

**495.0845 Delivery to Fabricator Hired by Out-of-State Buyer.** Company A, a California business, sells property to Company B, an out-of-state business which is not engaged in business in California. B directs A to deliver the goods to C, a business located in California. C assembles the property under contract with B and, at B's direction, ships it to D (B's customer) at an out-of-state location.

Since A did not deliver the property to an end user or an agent of an end user, A is not treated as the retailer of the property pursuant to section 6007. 4/20/95.

**495.0847 Delivery to In-State Processor.** A taxpayer sells products to a buyer who is not located or registered in California. At the buyer's request, taxpayer ships the product from its out-of-state plant or from its California plant to a company in California, which will perform further processing of the product for the buyer. The processor subsequently ships the processed product to the buyer's customer. The buyer's customer may be the end user or it may resell the product. The buyer's customer may be located in California or it may be located out of this state.

In all variations, the taxpayer is not delivering the product to the end user, but to a third party who will perform further processing. The processor, in turn, will later deliver the property either to the end user or to a reseller. Therefore, section 6007 does not apply to this taxpayer. If the taxpayer documents the fact that it shipped the product to a California processor on behalf of the buyer, the taxpayer is not subject any tax liability. The processor, however, may have liability under the second paragraph of section 6007. 9/15/94.

**495.0848 Delivery by Licensed Firearm Dealer.** A California resident purchased a firearm from an out-of-state retailer who is not engaged in business in California. The California customer contacts a licensed California firearm dealer and states that he paid money to an out-of-state dealer and wishes for the dealer to have the firearm shipped to the dealer's place of business and legally transfer the firearm to him. The dealer contacts the out-of-state seller and arranges to have the firearm sent to him. Upon receipt of the firearm (prepaid by the customer), the dealer logs the firearm into his Federal Acquisition/Disposition books. The customer then fills out the State Department of Justice Firearms Dealer Record of Sale. The dealer collects the state fee of \$14.00 plus a \$16.00 charge to cover the dealer's expenses.

When a licensed California firearm dealer completes the registration paperwork and delivers a firearm to a California purchaser for an out-of-state retailer not registered with the Board as a retailer engaged in business in this state, it is presumed that the dealer is the retailer of the firearm. In such a case, the dealer would owe sales tax on the total amount of the sales price of the gun, including the Department of Justice fee passed on to the customer and including the dealers service charge. (Section 6007)

If the out-of-state retailer was engaged in business in this state under section 6203, the California dealer's deliveries for that retailer will not be considered

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taxable retail sales by the dealer, even if the out-of-state retailer has not registered with the Board as a retailer engaged in business in this state. In such cases, the out-of-state retailer has the duty to collect the use tax under section 6203 and that retailer should collect tax on the invoice price of the firearm plus the dealer's service charges and the Department of Justice fee that is passed on the customer. 10/26/95. (Am. 99-2).

(Note: On and after January 1, 1999, the Department of Justice fee is not includible in the measure of tax, but all other charges remain subject to tax.)

**495.0849 Drop Shipment—Out-of-State Suppliers.** A firm that is not engaged in business in California under section 6203 makes sales through the World Wide Web. It acquires the goods it sells from two out-of-state suppliers who drop ship the orders directly to the firm's California purchasers. One of these out-of-state suppliers is engaged in business in California under section 6203 while the other is not. The out-of-state supplier who is engaged in business in California is deemed the retailer under section 6007 and is required to collect use tax from the consumers measured by the price paid by the consumers to the firm. With respect to the property delivered by the out-of-state supplier who is not engaged in business in California, since neither the firm nor the supplier is engaged in business in California, the consumers must self-report their use tax liability. 6/18/97.

**495.0855 F.O.B. Clause and Drop Shipment.** California's drop shipment rules are triggered by a drop shipment made by a person engaged in business in California to a California consumer on behalf of a retailer who is not engaged in business in California. An F.O.B. provision is not relevant to the question of whether the drop shipper is re-characterized to be the retailer for purposes of section 6007. 4/3/98. (M99-2).

**495.0860 Installation of Special Equipment.** An out-of-state retailer places an order for a truck which order is filled by the manufacturer's division in California, who in turn delivers the truck to another firm in California for the purpose of installing special equipment. If the out-of-state retailer's contract was to sell a completely equipped truck and he made the agreement for installation of the special equipment in California and also arranged to transport the vehicle to his customer out-of-state, it is an exempt sale for resale. If, however, his customer made the installation contract, delivery to the installer in California would amount to delivery to a consumer and a taxable retail sale would result. 1/7/55.

**495.0880 Interstate Delivery.** On or before December 31, 1992, the second paragraph of Section 6007 applies only to a situation where the goods are delivered to the consumer in this state from a point inside this state, and not where the goods are delivered from a point outside this state directly to the consumer in this state. 7/9/59, 8/21/92.

**495.0890 Interstate Delivery.** Effective January 1, 1993, under the second paragraph of Section 6007, a seller engaged in business in California owes sales tax, or must collect use tax, when it makes a wholesale sale of property and