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Mr. Maxim Munvez, CFO
Jeremias Inc.
983 Industrial Park Drive
Marietta, GA 30062

Re: General sales tax discussion in the states

Good Afternoon Maxim,

The purpose of this letter is to discuss the sales tax implications related to Jeremias Inc.'s (hereinafter "Jeremias") sales in the various states, and an overview of what Jeremias can accept from its customers in order to evidence a proper sales for resale exemption.

General Sales and Use Tax Discussion

Sales tax is imposed on the **retail sale** of tangible personal property and enumerated taxable services. The term "sale" generally refers to the transfer of a taxable good or service for consideration between two parties.

Generally speaking, the sale of tangible personal property is presumed to be taxable **unless** a specific exemption applies. Since sales tax is imposed on a retail sale, a sale of tangible personal property or taxable service to a purchaser who will ultimately resell the property or service would be exempt from sales tax in the state **to the extent the purchaser provides the valid resale documentation**. Without proper documentation evidencing that a sale is exempt as a sale for resale, a seller will be liable upon audit for the sales tax that was not otherwise collected.

The sales tax on taxable tangible personal property is generally imposed in the state where the goods are ultimately delivered (or where title transfers). Thus, the location of the seller is not necessarily the controlling jurisdiction for sales and use tax purposes.

In order for a seller to be responsible to collect and remit tax in the states, it must maintain the requisite nexus in the state. Nexus is the state's ability to exert its taxing jurisdiction on a business or individual. Historically speaking, sales tax nexus was generally established only if the business had a physical presence in the state (ex. employees or third-parties residing or travelling in to the state to establish or maintain a market on the seller's behalf, inventory, retail location, etc.).

However, effective with the U.S. Supreme Court decision in *Wayfair*, states are now able to impose economic nexus on remote sellers if they exceed certain thresholds. As of today, only two states do not currently have economic nexus thresholds for sales and use tax (Florida and Missouri). **Generally speaking**, the economic nexus thresholds in most states is \$100K of sales and/or 200 transactions.

If Jeremias' were to establish sufficient sales tax nexus in any state (either physical or economic), it would be required to register to collect and remit sales tax on its revenue streams in the state. As such, it would be responsible for collecting sales tax on its sales **unless its customers** provides it with a proper exemption certificate based on the transaction between them and

Jeremias. If Jeremias does not collect sales tax and does not have a proper exemption certificate from its customer for the state where it ships the property or performs the taxable service, it will be liable for the sales tax liability if it was subsequently audited for sales and use tax in that state.

Drop Shipments

Drop shipments provide a unique analysis with regards to sales and use tax because they involved two separate transactions and three parties (retailer, manufacturer/distributor (i.e. drop shipper), and ultimate consumer). The retailer sells to the ultimate consumer, but has the manufacturer/distributor ship the product to the ultimate consumer's location rather than the retailer. In this instance there are two separate identifiable transactions:

- Sale from retailer to ultimate consumer
- Sale from manufacturer/distributor (ex. Jeremias) to retailer

Each of these transactions are subject to their own sales and use tax analysis. More specifically, retailer's transaction with the ultimate consumer **generally** does not affect its transaction with the drop shipper from a sales and use tax perspective. As such, the drop shipper can only accept documentation related to the retailer for exemption purposes (ex. resale certificates), and cannot **generally** rely on the exempt nature of the ultimate consumer because it maintains a "sale" with the retailer, not the ultimate consumer. Thus, even if the ultimate consumer is somehow not subject to tax on the item dropped shipped by Jeremias (ex. manufacturing exemption), that would not be sufficient documentation from a sales and use tax perspective if Jeremias were audited in the state and did not have a valid exemption from its customer, the retailer.

Issues can arise in drop shipment circumstance if only the retailer or manufacturer/distributor is registered for sales tax in the state. If both parties were registered for sales tax in the state of shipment, there would generally not be an issue from a sale for resale certificate perspective. However, if the retailer is not registered for sales tax in a state but the drop shipper is, the drop shipper would need to collect sales tax on its sale to the retailer **unless** the state allows for an out-of-state sales tax account for purposes of evidencing an exempt sale for resale in the state.

Sale for Resale Exemption

States differ as to what they will accept as valid proof of resale exemption. Some states will accept an out-of-state retailer account as sufficient proof of a valid resale certificate, some states have their own specific resale certificate that must be provided and will allow a purchaser who doesn't otherwise have sales tax account in the state to utilize the form **if they indicate the reason why they don't have an account**, some states will only consider it a valid exempt sale for resale if the purchaser maintains a retail account in the state, and some states will impose a sales tax collection obligation on the drop shipper to the ultimate consumer, if the retailer does not have sales tax nexus in the state.

Below are two links related to multijurisdictional exemption certificates that indicate the state **may accept** an out-of-state retail account for purposes of substantiating a valid sale for resale exemption. The SSUTA (Streamlined Sales and Use Tax Agreement States) are more

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straightforward, and as part of their agreement must accept an out-of-state retail account. As such if Jeremias is drop shipping in to one of these states, its retail customer does not need to provide it with a retail account in that state if it does not have one. It should complete the SSUTA certificate contained in the link below.¹

https://www.streamlinedsalestax.org/docs/default-source/forms/exemption-certificate.pdf?Status=Temp&sfvrsn=e02b70bc_4

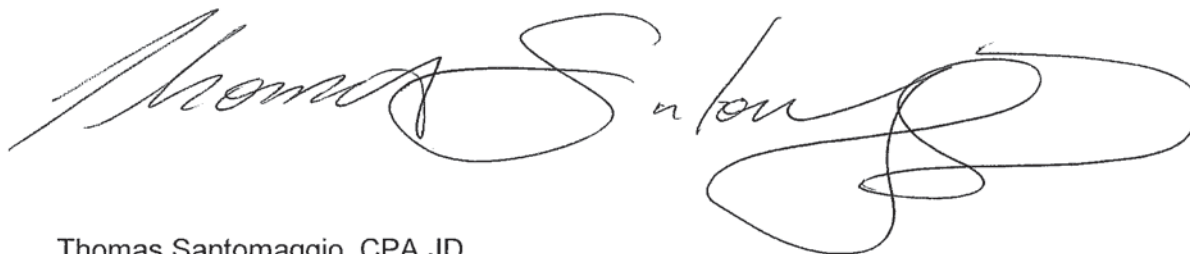
The Multistate Tax Commission ("MTC") is an intergovernmental state tax agency whose mission is to promote uniform and consistent tax policy and administration among the states, assist taxpayers in achieving compliance with existing tax laws, and advocate for state and local sovereignty in the development of tax policy.² This is another example of a multijurisdictional exemption document. However, it should be noted that only certain states accept this form, and some states may also require their own retail account number in order for the sale to be a valid sales for resale.

http://www.mtc.gov/getattachment/Resources/Uniform-Sales-Use-Tax-Exemption-Certificate/Uniform-Sales-and-Use-Certificate-3_13_2019.pdf.aspx?lang=en-US

As you may note, several of the larger states (ex. CA, FL, NY, and PA) are not included as states that would accept these forms. These are examples of states that require their own form, and may also require either an in-state retailer account, or a documented reason from the purchaser as to why they are not required to maintain such an account.

Please let me know if you have any further questions.

Thank you,

A handwritten signature in black ink, appearing to read "Thomas Santomaggio". The signature is fluid and cursive, with a large, stylized flourish at the end.

Thomas Santomaggio, CPA JD

State and Local Tax Director

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¹ "When a Drop Shipper delivers a product to the seller's customer in a Streamlined Full Member State, the seller may use the seller's sales tax registration number from the seller's state on the exemption certificate provided to the Drop Shipper. The seller is not required to provide a sales tax registration number from the state to which the sale is sourced when purchasing products for resale." <https://www.streamlinedsalestax.org/Shared-Pages/exemptions>

² <http://www.mtc.gov>