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August 12, 1994

Mr. J--- G---
 D--- T--- R--- Paper & Printing
 XXXX --- Street, Suite #XXX
 ---, CA XXXXX

Re: **SR -- XX-XXXXXX**

Dear Mr. G---:

This is a response to your July 15, 1994 letter to Staff Counsel Don Fillman regarding the application of tax to your company's purchase, manufacture, and sales of various paper products. You state:

"D--- T--- R--- Paper/Printing is a small company based in ---, California. We are both a distributor of finished office/janitorial products made from recycled paper and also print and manufacturing brokers of products made of recycled paper. In the second capacity, questions have arisen about where, if anywhere at all, D--- T--- should be collecting sales and/or use taxes for products whose manufacture we are overseeing on behalf of one of our clients, a long-distance phone company.

"Our client is also based in California. We have been contracted by them to manufacture and print both the phone bills themselves and the envelopes in which the phone bills are mailed to the individual subscribers of the phone company. We purchase the paper used in both the phone bills and the envelopes from a giant paper company whose headquarters are in Connecticut. The branch of that paper company from which we make this purchase is based in California. We pay no sales tax because we are purchasing this for resale The paper that we purchase for the paper company is shipped from the mill in Canada to two locations in the United States, one in Texas and one in Pennsylvania. We pay two different companies to do the physical manufacture and printing on our behalf. The company in Pennsylvania manufactures and prints the envelopes; the company in Texas manufactures and prints the phone bills. We are their client; we pay them as we pay the paper company. The phone company, who is our client, has nothing to do with these other companies at all. After the phone bills and envelopes are manufactured, they are both delivered to a data-processing facility in Pennsylvania that is in a different location from where the envelopes are being

manufactured. We have absolutely no relationship with the data-processing facility except for the fact that we deliver our product there on the phone company's behalf. We neither pay them for anything nor do they pay us for anything. They are a vendor contracted directly by the phone company. They are responsible for laser-printing the individual phone bills that list the actual calls made during a given month and stuffing the phone bills into the envelopes as well as mailing them. The phone company has customers in all 50 states; a very small percentage (under 5%) are located in Pennsylvania.

"The only time in this entire process that any physical goods that can be actually touched by a human hand enters the State of California is when the U.S. Postal Service delivers phone bills in the mail to subscribers of the phone company who live in California"

You ask whether your company owes any tax in Pennsylvania, California, or neither.

Discussion

Your letter sets forth a series of transactions occurring in several different states and Canada. We can only advise you on the applicability of California sales and use tax to those transactions. We understand that you have contacted the Revenue Department of the State of Pennsylvania to determine whether it imposes any taxes on your particular situation. You may also wish to contact the appropriate tax collection agency for Canada and the other states where your transactions occur to determine if a tax applies within those jurisdictions.

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in California unless the sale is specifically exempted from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax applies to the storage, use or consumption of property purchased from a retailer for use in California. (Rev. & Tax. Code §§ 6201, 6401.) Thus, the initial question is whether D--- T---'s purchases of paper goods and fabrication and printing are retail sales of tangible personal property. If so, sales tax applies if the sale takes place in California. Alternately, use tax applies if the transactions are retail sales outside California for use by the purchaser inside the state.

You state that D--- T--- purchases paper goods for the fabrication and printing of bills and envelopes for resale to the phone company. Under these facts, a retail sale does not occur since D--- T--- purchases the paper goods for resale (Rev. & Tax. Code § 6007) and is not the consumer of the bills and envelopes fabricated by the Texas and Pennsylvania companies (Rev. & Tax. Code § 6006(b)). Paper sales to D--- T--- also occur outside California since these goods are physically located in either Canada, Texas or Pennsylvania when title passes. (Rev. & Tax. Code §§ 6010.5, 6006(a); Cal. U. Com. Code § 2401.) Your company's paper purchases, fabrication and printing operations are accordingly not subject to California sales tax.

D--- T--- then sells the bills and envelopes to the phone company and delivers them to the phone company's data-processing vendor in Pennsylvania. This sale also occurs outside California since the goods are located in either Texas or Pennsylvania when title passes to the phone company. (Rev. & Tax. Code §§ 6010.5, 6006(a); Cal. U. Com. Code § 2401.) As such, no California sales tax applies to this transaction.

You next explain that the only property entering California is the bills sent by the data-processing vendor to the phone company's California customers. If the California customers are regarded as purchasing this property from the phone company, use tax would apply to the use of such property in California. However, a utility company is generally regarded as the consumer of bills and invoices sent to its customers to reflect the company's charges. Thus, your sale of bills and invoices to the phone company is a retail sale since the phone company will not resell these goods to its customers. The remaining issue, therefore, is whether the bills sent to the telephone company's California customers are purchased by the phone company for use in this state. If so, use tax applies and D--- T--- is required to collect the applicable taxes from the phone company. (Rev. & Tax. Code § 6203.) If not, no tax applies.

You state that the phone company's vendor inserts the bills into envelopes and mails them from Pennsylvania to the phone company's customers in California. Based on these facts, we consider the phone company's use to have occurred at the place where title to the bills is transferred from the phone company to its customers. This occurs in Pennsylvania when the bills are deposited in the U.S. Mail on the phone company's behalf by its vendor for shipment to California. (Cf. Cal. U. Com. Code § 2401.) The phone company is therefore not regarded as purchasing bills or envelopes for use in California and D--- T--- is not required to collect use tax from the phone company.

If you have any further questions or facts which may alter the above analysis, feel free to write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

cc: --- District Administrator - -