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November 18, 1993

BURTON W. OLIVER
Executive Director

Mr. A--- J. B--- E.A.
A J B--- F--- S---
XXXX --- --- Suite ---
---, CA XXXXX

Dear Mr. B---:

Re: SR -- XX-XXXXXX
J--- E. D---
dba J--- D--- M--- H---

This is in response to your letter dated September 1, 1993, in which you ask how tax applies to mobilehomes. You state:

“Taxpayer is requesting a clarification as respects Dealer-Retailer selling a mobilehome in another county. Dealer is currently taking the position that upon the sale, delivery and installation of a new mobilehome in the County of Monterey, that dealer will remit[] sales tax based upon the Monterey County sales tax rate.

“The basis of our position is that Dealer-Retailer is not selling subject unit out of his inventory rather picking up the unit outside of Santa Cruz County, (situs county of Dealer's inventory), delivering, and installing the unit in Monterey County, therefore, Dealer-Retailer would be acting as a (construction) contractor and would allocate sales tax remitted based upon sales made by county and filing Schedule B Detailed Allocation by County of 1% Uniform Local Sales and Use Tax.”

The minimum combined state sales tax rate is 7-1/4 percent. Pursuant to the Transactions and Use Tax Law, a district, usually coterminous with a county, may adopt an additional sales tax of up to one and one-half percent (hereinafter called a district tax) for a total maximum combined state sales tax rate of 8-3/4 percent. A district's sales tax is applicable to sales occurring in that district unless the sale is otherwise exempt from the district sales tax. The exemption relevant to this discussion is the exemption for a sale of property which is shipped to a point outside the district pursuant to the contract of sale. (Rev. & Tax. Code § 7261(a)(6).)

When the property, pursuant to a contract, is shipped from the seller to a purchaser outside the district where the sale occurred, the transaction is exempt from the district sales tax imposed in the district where the sale occurred. If the property is shipped to a purchaser outside the district where the sale occurred for use in a county which does not have any district taxes, the total tax rate applicable to the sale is 7-1/4 percent. On the other hand, if the property is purchased for use in a county which has a district tax, that district's tax applies.

The total combined sales and use tax rate applicable to those sales is the rate in effect in the county where the property is shipped. Thus, when the mobilehome is shipped to a purchaser in Monterey County, the applicable sales and use tax rate is the Monterey County rate. However, only a retailer engaged in business in the district imposing the district tax is required to collect that tax. This is explained in Regulation 1827, a copy of which is enclosed.

A retailer may voluntarily register to collect all district taxes imposed by districts in California. If it were to do so, it would be required to collect the applicable district use taxes for all districts imposing district taxes. (Reg. 1827.)

Whether a retailer is required to collect the applicable district tax depends on whether it is engaged in business in that district. Regulation 1827(c) defines a "retailer engaged in business in a district" to include:

"(1) Any retailer maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in the district.

"(2) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in the district under the authority of the retailer or its subsidiary for the purpose of selling, delivery, or the taking of order for any tangible personal property.

"...."

You have stated that the dealer's inventory is located in Santa Cruz County but that the mobilehome is being picked up outside of Santa Cruz County. It is not clear from your letter from which county the mobilehome is being picked up. If it is being picked up in Monterey County, it is likely taxpayer is engaged in business in Monterey County. If the taxpayer is engaged in business in Monterey County, taxpayer would be required to collect any district tax applicable to Monterey County.

In addition, the jobsite of a construction contractor is the place of sale. Accordingly, if the jobsite is in a district having district taxes, a contractor engaged in business in that district must collect that district's tax. (Reg. 1826(b)(1).) A contract to install and furnish a mobilehome is a construction contract. (Reg. 1521(c).) Your letter states that the dealer-retailer delivers and installs the mobilehome in Monterey County. Thus, the dealer-retailer, in this setting, is a construction contractor and as such is engaged in business in Monterey County and taxpayer would be required to collect any district tax applicable to Monterey County.

Sincerely,

Rachel M. Aragon
Staff Counsel

RMA:jlh
Enclosure