STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION - MIC 82
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February 23, 1995

REDACTED TEXT

Re: REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in response to your letter dated January 19, 1995 regarding the application of tax on sales of cellular equipment and service.

You state:

> "REDACTED TEXT is involved with several two-way communication system[s] which ... [are] funded 90% by a Mass Transit act of the Federal Government. The State of California acts as an intermediary of the program and collects the monies from the Federal Government and then pays our invoice. 10% of the monies is collected from the end user who uses the radio equipment along with step vans (also furnished by the Federal Government) to transport aged and disable[d] persons on a non-profit basis."

We understand from your letter that you ask what portion, if any, of REDACTED TEXT's sales of cellular equipment and service under these circumstances are subject to tax.

<u>Discussion</u>

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.) The tax is imposed on the retailer who may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code § 1656.1.)

The exemption relevant to ACE's sales in this situation is set forth in Revenue and Taxation Code section 6381:

> "There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:
>
> > (a) The United States, its unincorporated agencies and instrumentalities;
>
> "...."

Sales of tangible personal property to state agencies (i.e., California governmental entities), however, are subject to tax unless otherwise exempted by statute. (See Business Taxes Law Guide Annot. 505.0660 (7/18/51).) In particular, the Revenue and Taxation Code section 6381 exemption does not apply to sales to a state agency, even if the agency uses funds supplied by the Federal Government to make the purchases of tangible personal property. (Reg. 1614(a)(4); Business Taxes Law Guide Annots. 505.0660 (7/18/51), 505.0640 (3/18/52).)

We understand from your letter that REDACTED TEXT sells cellular equipment to either the end user (i.e., aged and disabled individuals benefitting from the "Mass Transit Act") or to the State of California for distribution to these individuals. If so, sales tax applies on the entire amount REDACTED TEXT receives on these sales since REDACTED TEXT does not make any portion of these sales directly to the Federal Government. That is, sales of cellular equipment to either the individual end-user or the State of California do not qualify for the exemption set forth in Revenue and Taxation Code section 6381 even though funding for such sales is ultimately provided by the Federal Government. This means that the measure of tax on REDACTED TEXT's sales include all amounts received with respect to its sales of cellular equipment, whether from the end-use customer who pays 10 percent of the sales price or from the State of California who pays 90 percent of the sales price.

The calculation of REDACTED TEXT's taxable gross receipts from the sale of cellular equipment may also include amounts characterized as telephone service charges. Ordinarily, utility service charges such as telephone service are not subject to sales tax. However, when telephone service charges are more for a purchaser of a cellular telephone than for someone who does not buy a telephone, we consider this additional amount as part of the taxable gross receipts from the sale of the telephone and not as part of the nontaxable amounts paid for actual telephone service. For example, if REDACTED TEXT requires a cellular telephone purchaser to also purchase six months of telephone service and charges $50 per month, plus usage (and $25 per month, plus usage, after the first 6 months), but charges anyone who does not buy a cellular telephone $25 per month, plus usage, for every month including the first six, then REDACTED TEXT is getting $150 in additional taxable gross receipts when it requires the purchaser of the cellular telephone to also purchase the service. The taxable gross receipts from the sale of the cellular telephone would include that additional $150 the customer is required to pay. As set forth above, the Revenue and Taxation Code section 6381 exemption would not apply to these additional gross receipts since REDACTED TEXT's sales are not to the United States.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

cc: Sacramento District Administrator - KH