



STATE BOARD OF EQUALIZATION

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July 10, 1991

Mr. W--- J. M---
Tax Manager, T---, Inc.
XXX --- Avenue
---, Massachusetts XXXXX

RE: --- XX-XXXXXX
Local Tax Allocations

Dear Mr. M---:

Mr. Larry Micheli of the Local Tax Section has by memorandum dated June 19, 1991, asked that the Legal Division respond to your June 14, 1991, letter to their Ms. C--- S--- regarding the allocation of local taxes on T---'s taxable sales in California. Your letter has been referred to me.

I. FACTUAL BACKGROUND

In your letter you discuss T---'s California operations, in part, as follows:

“T--- has had a manufacturing plant in the --- ---, California area since 1968. The S--- T--- Division (STD), which operates the plant, has relocated twice. In 1978, STD moved from C--- to W---, and in 1987, STD moved from W--- to A---.

“At the present time, T--- maintains the following sales and service offices in California:

- A---
- I---
- S--- ---
- S--- ---
- S--- ---
- S---

* * *

LOCAL TAX ALLOCATIONS

“T---’s corporate headquarters and tax department are located in [out of state].
....

T---’S STD SALES

“... Because of the expensive nature of its products, it is the operating practice of T--- not to maintain a finished goods inventory. Accordingly, no inventories are maintained at local sales offices to make deliveries. ... No order is regarded as accepted by T--- unless it is accepted by STD marketing personnel at A---.

“The Company markets its equipment in such a manner that it does not have a set price list. The negotiations for any order are controlled by the division selling the equipment which service various segments of the automatic test equipment industry. A division may issue a quotation through a local salesman; however, the local salesman has no flexibility to negotiate conditions or pricing of the sale.”

Your letter did not contain many details regarding the day-to-day operations of T---’s sales offices. Attached to Mr. Micheli’s memorandum were several letters, including one to Mr. M--- dated April 23, 1991, from Mr. J--- T. A--- of --- --- ---, who conducted an audit, on behalf of his client, of T---’s sales operations to determine the allocation of local sales and use tax revenues. In that letter, he discusses T---’s sales operations as follows:

“All of T---’s sales personnel in California office in I--- (X --- Street) or S--- (XXX ---). Furthermore, T---’s promotional literature specifically lists I--- and S--- as its California sales office locations. Up until mid-1990, Z---/T--- sales personnel also office in W--- C--- (XXXX --- Drive).

* * *

“During the course of selling or attempting to sell its products to existing/prospective customers, T---’s field salespeople do engage in the standard activities normally associated with salespeople, such as presentations and discussions regarding product specifications, features, benefits, prices, and other terms and conditions of sale.

“T---’s field salespeople and existing/prospective customers are provided with regularly updated literature that encompasses the T--- product line, with detailed information regarding individual prices.

“T--- pays salary plus sales commissions to its field salespeople.”

For the purpose of this discussion, we will assume that Mr. A---'s account accurately reflects the I--- and S--- office's roles in T---'s sales operations.

OPINION

A. Local Tax Generally

In 1955, the legislature enacted the Bradley-Burns Local Sales and Use Tax Law (Rev. & Tax. Code §§ 7200 et. seq., hereinafter "Bradley-Burns tax." All statutory references are, unless otherwise stated, to the Revenue and Taxation Code.) Section 7205, as interpreted and implemented by 18 California Code of Regulations (hereinafter "Regulation") 1802, provides that, for the purposes of the Bradley-Burns tax, all retail sales take place at the retailer's place of business unless the property is delivered out of state. If a retailer has more than one place of business in this state which participates in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If that is where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, credit approval, shipment or billing. (Reg. 1802(a)(2). Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.)

In our opinion, the term "principal negotiations" as used in the above regulation does not mean final approval by the headquarters office to enter into the contract, nor does it refer to the authority of the headquarters office to finally negotiate the price offered or accepted. Rather, our opinion is that when the principal point of contact between the seller and its prospective customers is through sales personnel located in or working out of a branch sales office, the place of sale for Bradley-Burns tax purposes is that sales office, notwithstanding that the headquarters office has final approval and price discount authority. In all but exceptional cases, a field sales office out of which salesmen work in contacting customers, making presentations, and soliciting orders for the work involved is the place of "principal negotiations."

If Mr. A---'s description of the sales activities of STD's I--- and S--- offices is correct, these offices do appear to be conducting the "principal negotiations" as defined above. The sales personnel make presentations, discuss the features of T---'s products, negotiate the various terms and conditions of the sales with the customers (except for price), and are paid sales commissions. Presumably the office themselves are at locations in which STD or T--- has an ownership or leasehold interest and are not merely desks provided by the customers at their own places of business.

Thus, we conclude that STD is not properly allocating its Bradley-Burns taxes regarding the sales from its I--- and S--- offices. Those offices are required to hold permits, and STD must allocate Bradley-Burns taxes to those field offices rather than to its headquarters office.

Section 7209 permits, but does not require, the Board to reallocate local tax to the cities and counties entitled to the taxes for certain past periods. In this case, however, the factual and legal issues which resulted in STD's past allocations are only now being resolved. By copy of this letter I recommend to our Local Tax Unit and the Los Angeles County (AC) District office that no reallocation be made here. By the same token, no reallocation need be made for sales from the W--- C--- office which I understand is no longer in operation. STD should be issued sales permits for the I--- and S--- offices and begin to report local tax for all commissioned sales at those locations beginning with the fourth quarter of 1991.

For your information, I have enclosed a copy of Regulation 1802. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es
3941I

Enclosure: Regulation 1802

cc: Mr. Larry Micheli, Supervisor, Local Tax
Van Nuys District Administrator
Oakland District Administrator