

**STATE BOARD OF EQUALIZATION**

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December 28, 1990

Mr. J--- M. V---
Law Offices of
---, --- & ---
P.O. Box XXXX
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S--- M---, Inc. – SR -- XX-XXXXXX
Bradley-Burns Tax Allocations – Field Sales Offices

Dear Mr. V---:

In your September 13, 1990 letter to Mr. Gary J. Jugum, Assistant Chief Counsel, you request the Board's legal staff's written advice pursuant to Revenue and Taxation Code 6596, (taxpayer reliance on written advice) regarding two issues involving S--- M---' ("S---") allocation of local (Bradley-Burns) sales and use tax revenues. The first issue is whether S---'s Bradley-Burns taxes on its California sales should be allocated to its headquarters office or to its field sales offices. The second issue is whether S--- is properly allocating local use tax to its [California] warehouse for S---'s computer work stations which it withdraws from its resale inventory at the warehouse and ships to various S--- offices elsewhere in California.

Section 6596

Although you have requested written advice pursuant to section 6596, that section does not apply to the issues you raise in your letter. That section applies in situations where (among other things) a taxpayer has failed to collect sales tax reimbursement or use tax in reliance on Board staff's written advice. (§ 6596(b)(3)). Here, the issues are not whether S--- has reported or collected the correct amount of tax, but rather whether S--- has correctly allocated the local portion of that tax among the cities and counties where S--- has offices.

Place of Sale – Headquarters and Field Sales Offices

With respect to the first issue, you relate that before March 10, 1990, S--- allocated its local tax to its Headquarters office in [California]. Since March 1990, when S--- moved its headquarters to P---, S--- allocates its local tax to P---. Both before and after March 1990, S--- has had various offices located throughout the state which are utilized by S---'s sales personnel who solicit orders from prospective customers. The headquarters consists primarily of S---'s administrative functions, including its contract and marketing divisions. Headquarter personnel also solicit orders from customers and the marketing personnel often instruct the sales personnel regarding contacts for possible business. The sales personnel at the field offices have no authority to bind S--- to a particular sale without approval by the company's headquarters personnel. Only the contract personnel can give discounts to purchasers.

In 1987, S---'s allocation of local tax to its headquarters office was accepted by the Board in an audit of S---. S--- had previously obtained subpermits for the field sales offices, and the Board closed out these subpermits. You enclosed a Report of Field Audit dated 4-14-87 which describes the Board's actions. In the Report of Field Audit, the auditor writes: "Taxpayer maintained offices in other taxing jurisdictions during the audit period. However, all sale[s] were made at place of business (California)...Subpermits issued for various office locations maintained throughout the state have been closed out as no sales were negotiated at these locations."

Your contention is that S--- has correctly allocated local taxes on two grounds. First, Revenue and Taxation Code section 7205 defines the place of sale as the place of business where sales are consummated, and S--- has only one such place of business. Your view is that under Regulation 1699, S--- is not required to hold seller's permits for the field offices because the activities of the personnel in these offices are limited. These personnel are unable to bind S--- to any specific transaction and are unable to independently negotiate with customers.

Second, you contend that even if S---'s field offices are considered places of business, the place where the sale is principally negotiated and actually consummated is where the contract and marketing personnel are located. Under Regulation 1802(a)(2), if two or more places of business participate in the sale, the sale occurs where the "principal negotiations" took place. Your contention is that the negotiations by the contract and marketing personnel are the principal negotiations with the customer which result in a consummation of the sale, and these occur at the headquarters, not the field sales offices.

In connection with this issue, Mr. Frank Goldberg, District Administrator, San Jose District Office, forwarded to the legal staff a letter dated June 8, 1990 from Mr. J--- T. A---, --- --- ---, related to S---' local tax allocation. Mr. A--- represents the city of --- ---, where one of S---'s field sales offices is located. Mr. A---'s contention is that S---'s sales people at its field sales offices engage in the standard activities normally associated with sales people, including presentations and discussions regarding product specifications, package configuration options, features, benefits, prices and other terms and conditions of the sale, and S--- pays commissions to its sales people

based in their individual sales performance. Mr. A--- sent a copy of his letter to Mr. R--- L. S---, of S---, and I enclose a copy of this letter for your reference.

Opinion

Our opinion is that S--- is not correctly allocating its Bradley-Burns taxes. The field sales offices which S--- maintains are required to hold permits, and S--- is required to allocate Bradley-Burns taxes to these field sales offices rather than to its headquarters office.

We reach this conclusion because in our opinion the term “principal negotiations” as used in Regulation 1802(a)(2) does not mean the 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 the 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 has price discount authority. In all but exceptional cases, a field sales office out of which sales people work in contacting customers, making presentations, and soliciting orders for the work involved is the place of “principal negotiations”. However, if for a particular transaction, S--- can show that its sales personnel were only incidentally involved with the customer contact (for instance, if the sales personnel received no commissions) and the principal contacts with the customer were maintained through the headquarters office, then in that particular instance, the local tax would properly be allocated to the headquarters office.

Revenue and Taxation Code 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 S---’s past allocations are only now being resolved. In addition, this letter reaches a conclusion on this issue which is contrary to an earlier decision by Board staff to close out the field sales office permits. By copy of this letter, I recommend to our Local Tax Unit and the San Jose District office that no reallocation be made in this case. Instead, S--- should be reissued subpermits for its field offices and begin to report local tax for all commissioned sales at those locations beginning with the first quarter of 1991.

Place of Use of Inventory Items

With respect to the second issue you raise, you relate that S--- withdraws from inventory computer work stations for use by its own personnel at its [California] warehouse location. Your contention is that the local use tax due on these items is properly allocated to the warehouse location in [California], since that is the place where they were first withdrawn from resale inventory and put to a use which subjects them to use tax.

We agree with your contention. Where the computer work stations were not subject to sales tax because they were held for resale, their withdrawal from resale inventory subjects them to use tax, and it is the place of first use of which determines the place of use. Since this is the warehouse location in [California], S--- is properly reporting the local use tax to that location. If S--- has not obtained a subpermit for this location, it should do so in order to accurately report the local use tax.

Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Senior Tax Counsel

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cc: Mr. J--- T. A---
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Mr. Larry Micheli, Supervisor Local Tax Unit
Mr. Frank Goldberg, San Jose District Administrator