

**STATE BOARD OF EQUALIZATION**

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February 11, 1997

E. L. SORENSEN, JR.  
Executive Director

Mr. [B]  
[H]  
XXX --- ---, Suite XXX  
--- ---, -- XXXXX

RE: [No Permit Number]  
Regulation 1802(c)(2)

Dear Mr. [B]:

I am answering your letter to me dated December 20, 1996. As you indicate, you were following up on our prior conversations regarding the interpretation of the words "transaction" as used in Regulation 1802(c)(2)(A) and "purchase" as used in subdivision (c)(2)(B).

Your concern regards the interpretation of the regulation when several shipments of goods are involved pursuant to one purchase contract. You discuss the problem as follows:

"A contract/purchase order may involve many invoices over a substantial period of time. When an item of tangible personal property is shipped, it is accompanied by a piece of paper that classifies it and accounts for it. This document is generally referred to as an invoice. It provides shipment dates, modes of transport, itemized prices, inventory data, and other supplemental information pursuant to a contract or purchase order."

You are concerned that tangible personal property bought in one "purchase" (or in one "transaction") may actually be delivered to the customer under many invoices. You ask for confirmation that the terms "contract" or "purchase order" will be used in determining if a "transaction" is greater than \$500,000 under Regulation 1802(c)(2) rather than the term "invoice."

**OPINION**

On April 23, 1996, the Board approved amendments to Regulation 1802. Among other changes, a new subdivision (c) was added, subdivision (2) of which reads as follows:

"(1) When the order for the property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the

purchaser in this state from a point outside this state, the transaction is subject to the local use tax ordinance of the participating jurisdiction where the first functional use is made. Operative July 1, 1996, for transactions of \$500,000 or more, except with respect to persons who register with the Board to collect use tax under Regulation 1684(b) (18 CCR 1684), the seller shall report the local use tax revenues derived therefrom directly to such participating jurisdiction.

“(2) Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.”

As you note, (A) uses the word “transactions,” and (B) uses the word “purchase.” The language difference is derived from the terms of art that apply to sales by sellers and purchases by consumers, but, for our purposes, they apply to the same kinds of activities.

We agree with you that an invoice is, standing alone, not a contract. (India Paint Co. v. United Steel Prod. Corp. (1954) 123 Cal.App.2d 597, 607.) Neither, however, is a purchase order, as that term is commonly understood. (Cal.U.Comm.Code § 2206; Tomlinson v. Wander Seed & Bulb Co. (1960) 177 Cal.App.2d 462, 471; See, Annot. 190.2825 (12/6/93).)

We understand, however, that the goods which are the subject of a sales contract may not all be shipped at once. They may be shipped in separate lots each with its own invoice. In such a case, the total value of the sales contract would determine if the retailer should be reporting local use tax directly to the jurisdiction of the purchaser under Regulation 1802(c)(1) rather than to the jurisdiction through the medium of the countywide pool.

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  
Senior Tax Counsel

JLW:sr  
M:contract.ltr

cc: Mr. Larry Micheli (MIC:27)  
Mr. Robert Wils (MIC:39)