

800.0005

Memorandum

To: Mr. E. A. Elberg
Return Review Unit

Date: April 3, 1990

From: John Abbott
Senior Tax Counsel

Subject: REDACTED TEXT
Account No. REDACTED TEXT
District taxes – mortuary’s delivery of caskets outside of district

In your memo dated February 20, 1990 to Legal, you write:

“TP owns a mortuary in San Francisco (SF). Since SF has no currently active cemeteries, TP delivers goods (i.e., casket and body) to San Mateo Co. for burial. TP claims sale is in SF at 6.5%, but since he delivers to San Mateo, he allocates the ½% district tax collected to San Mateo (7% district). Thus, if San Mateo tax rate applies he is ½% short. TP claims B of E had directed this payment method years ago. Regulations are not clear when title changes hands, could you please clarify. Which tax rate should apply? Which county should be allocated the tax (district)?”

Under Regulation 1505(a), a mortician is a retailer of a casket, and tax applies to the sales price of the casket, (as well as other tangible property if sold by the mortician for a separate charge). Under subdivision (b) of Regulation 1505, the mortician’s sale of a casket and other tangible property which is delivered or shipped by the mortician to an out-of-state point pursuant to the agreement of sale is an exempt sale in interstate commerce.

With respect to district taxes, Regulation 1823(a)(2)(B) provides that district transactions tax does not apply to sale of property:

“(B) To be used outside the district when the property sold is shipped to a point outside the district pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. If the purchaser uses the property in a district imposing transactions (sales) and use taxes, the use tax may apply;”

Under subdivision (b)(1)(E) of that regulation, the purchaser is liable for district use tax if:

“(E) The place of sale is in a district having state-administered transactions (sales) and use taxes, but at a rate lower than the rate (or combined rate) in effect in the district (or districts) in which the property is purchased for use and actually used. The person liable for the use tax is entitled to a credit against the use tax liability equal to but not exceeding the transactions (sales) tax or transactions tax reimbursement paid to a district or to a retailer in the district where the sale occurred. If the taxable use occurs in two or more districts whose boundaries are overlapping or coextensive, the amount of the credit shall be applied as follows: first, against the use tax liability imposed in the district having the earliest enacted state-administered transactions (sales) and use tax ordinance; second, against the use tax liability imposed in the district having the next earliest state-administered transactions (sales) and use tax ordinance; and so forth, until the amount of the credit is exhausted.”

In the situation you have described, the application of district transactions and use taxes depends upon whether the mortuary has a contract of sale with its customer which requires the mortuary to deliver the casket to San Mateo County. If this is the case, then the sale is exempt from the San Francisco district transactions tax under Regulation 1823(a)(2)(B). Since the casket will be used in San Mateo County, the district use taxes imposed by each of the two districts in San Mateo County apply to the transaction. If the mortuary is engaged in business in those districts, it is obligated to collect both district use taxes from its customers. (Reg. 1827.)

If the mortuary's contract with its customer does not require it to deliver the casket outside of San Francisco, then the place of sale is San Francisco, and the San Francisco district transactions tax applies. Since the customer used the casket in San Mateo County, the San Mateo district use taxes apply, and the mortuary is required to collect those district use taxes if it is engaged in business there. But the customer is entitled to a credit for district transactions tax paid in San Francisco. (Reg. 1823(b)(1)(E).)

I note that beginning April 1, 1990, San Francisco now has two districts imposing transactions and use taxes, and the combined rate of sales and use tax is the same as the combined rate in San Mateo County. Therefore, Regulation 1823(b)(1)(E) credits for sales made in San Francisco will no longer apply to this taxpayer's transactions on and after April 1, 1990.

JA:cl