

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

March 25, 1992

Mr. L--- F---
Sales Representative
F---, Inc.
XXXX --- Avenue
--- ---, CA XXXXX

RE: SR -- XX XXXXXX
District Taxes

Dear Mr. F---:

I am responding to your letter to me dated February 21, 1992. You have requested advice regarding the proper tax rate to apply to your company's sales in California.

I. FACTUAL BACKGROUND

Your describe the factual background of your problem as follows:

"F--- M.S.G., Inc. ("F---"), is involved in the sales of natural stone tiles and slabs, in addition to items manufactured from such. We operate from a warehouse in ---, CA, and a showroom in West ---, CA. We ship material to all points in California and the United States. We have no other agents, offices or distribution points. We do employ outside salespeople which solicit for business outside of our two offices, and through various parts of the state.

"All material is sold F.O.B. our --- warehouse. Items are crated and made ready for shipping, but all shipments of material must be arranged with freight forwarding companies by the client. Any freight claims for breakage of material are thus made by the client."

II. OPINION

A. Transactions and Use Tax

1. Generally

In California, there is a statewide tax rate of 7.25%. This rate is made up from the California Sales and Use Tax (§§ 6051, et. seq., and 6201, et. seq.), and the Bradley Burns Uniform Local Sales and Use Tax (§§ 7200-7212). In 1969, the legislature enacted the Transactions and Use (hereinafter "District") Tax Law. (Rev. & Tax. Code §§ 7251 et seq.). Pursuant to various enabling statutes, a number of counties have established county-wide taxing districts. To support such districts, transactions and use taxes are imposed at rates of 0.25% or 0.5% of the gross receipts from the sales within the district (or districts, if there is more than one in a county) of tangible personal property sold at retail or of the sales price of property whose use, storage, or consumption within the district is otherwise subject to tax. (§§ 7261(a)(1), 7262(a), 7285, 7285.5).

2. "Out-of-District Exemption

There are some exceptions to the District Tax. Sections 7261 and 7262 require that each district imposing a tax ordinance must include in its ordinance certain uniform provisions. One of these required provisions exempts from the transactions tax imposed on retailers, but not the use tax imposed on purchasers, sales of property to be used outside the district of sale if the retailer ships to a point outside its district pursuant to a contract of sale between the retailer and the purchaser. (Section 7261(a)(6).) In interpreting and applying this exemption, Title 18, California Code of Regulations, Regulation 1823(a)(2) provided that the transactions tax does not apply to gross receipts from sales of tangible 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."

The district transactions tax applies if the place of sale is in the district where the purchaser takes possession of the property. The place of sale is where the sales office is. (Reg. 1822(a)(2).)

B. Retailer's Duty to Use Collect District Tax

Whether a retailer not located in a district (or located in a different district than the purchaser) is obligated to collect the district use tax from the purchaser, depends upon whether the retailer is "engaged in business" in the purchaser's district, as defined in Regulation 1827. In summary, Regulation 1827(b)(1) & (c) provides that if a retailer has either a place of business in a district, or has representatives or agents operating in a district, for the purpose of selling,

delivering, or taking orders for tangible personal property, then the retailer is obligated to collect that district's use tax from the purchaser if the retailer ships the property sold into the district, or participates in the district in making the sale.

C. Tax Consequences to Flexsol

For district tax purposes, your only place of business is the West --- showroom. West --- is, as you noted, in --- --- County which has two countywide taxing districts for a total tax rate of 8.25%. As a result, all sales to --- --- County residents or in which the purchaser picks up the goods at the warehouse are subject to --- --- County transactions taxes at the above rate.

When, pursuant to the contract of sale, you ship your products out of --- --- County, its transactions (sales) taxes do not apply to the sale. (Reg. 1823(a)(2)(B).) If the purchaser resides in a county which has no county-wide taxing district, only the state-wide rate of 7.25% applies to the sale. A purchaser who resides in a county having such a district is liable for its use tax(es) at the rate in effect there.

F--- is not required to collect that district's use tax unless it is engaged in business there. You said that F--- has outside agents who solicit business in various parts of the state. As noted above, a retailer is engaged in business in a district where he has representatives or agents. (Reg. 1827(c)(2).) If F--- ships property pursuant to a sales contract into a countywide taxing district in which one of its sales agents is operating, it is engaged in business in that district and is required to collect use tax on that sale at the rate in effect there.

For your information, I have enclosed copies of Regulations 1822, 1823, and 1827. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Very truly yours,

John L. Waid
Tax Counsel

JLW:es
4358I

Encs.: Regs. 1822, 1823 & 1827