



STATE BOARD OF EQUALIZATION

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May 16, 1995

REDACTED TEXT

BURTON W. OLIVER
Executive Director

Re: REDACTED TEXT
Tax Rate on
Out-of-County Sales

Dear REDACTED TEXT,

I am responding to your letter to the Legal Division dated March 27, 1995. You ask about the correct tax rate to apply to your company’s sales. You indicate that REDACTED TEXT is a distributor of vitamin products sold only to “health professionals.” You are apparently not questioning the taxability of such sales. Placer County does not have a special taxing district. Your letter further indicates that you began shipping from Alameda County as of April 24, 1995.

OPINION

A purchase is subject to district use tax if the property is purchased for use in a district and the sale does not take place in a taxing district. (Reg. 1823(b)(1)(B). Sales and Use Tax Regulations are issued by the Board to aid in the enforcement and administration of the Sales and Use Tax Law and have the force and effect of law.) The purchaser owes the use tax, but the retailer is required to collect it only if engaged in business in the purchaser’s district. (Reg. 1827(a).) In sum, Regulation 1827(b)(1) and (c) provide that if a retailer has either a place of business in a district, or has representatives or agents operating there for the purpose of selling, deliver, or taking orders for tangible personal property, then the retailer is obligated to collect that district’s use tax from the purchaser if it ships or delivers the property to the purchaser in the district, or participates in the district in making the sale.

Your letter indicates that REDACTED TEXT ships its products by common carrier and that it employs no “sales representatives.” It does ship all over northern and central California. It is not required that a person representing REDACTED TEXT be employed by it in order to be an “agent” within the meaning of the regulation. All that is necessary is for someone to be operating in a district under its authority for the purpose of selling, delivering, or taking orders for the sale of tangible personal property. (Reg. 1827(c)(2).) Assuming that no one is doing so, the only taxing districts in which REDACTED TEXT appears to be engaged in business are those in effect where the warehouse is – Alameda County (two taxing districts, combined rate of 8.25%). So, if the sale takes place in Placer County, REDACTED TEXT need only collect district use tax in Alameda County. If the sale occurs in Alameda County, it must pay the transactions taxes of the alameda County districts but is not required to collect district use taxes in any county, giving a rate of 7.25% for such sales.

For your information, I have included copies of Regulations 1823 and 1827. 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 Staff Counsel

JLW:sr

Enclosures: Regs. 1823 & 1827

cc: Sacramento District Administrator - KH