



STATE BOARD OF EQUALIZATION

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June 25, 1993

Mr. J--- H---  
V--- S---, Inc.  
XX --- Court, Suite XXX  
---, CA XXXXX

Re: V--- S---, Inc.  
SR -- XX-XXXXXX

Dear Mr. H---:

This is in response to your letter of November 13, 1992 which requested that we provide information necessary to determine the proper tax rate that applies to your retail sales.

We understand that your principle place of business is located in --- County. You contract out most activities such as order taking, warehouse storage, fulfillment, order processing and shipping to subcontractors located in other counties. You ship merchandise outside of California as well as into many counties of California other than ---. You use UPS, Federal Express, and other common carriers, rather than your own vehicles. A shipping and handling charge is made in addition to the retail price of the merchandise.

Your sources of customers are ads which you place in various publications which contain "800" numbers. When an order is received by telephone, it is relayed to a warehouse (outside of ---) for shipment.

The current statewide rate for sales and use taxes is 6%, to which is added the 1-1/4% Bradley Burns uniform local rate, and any district transaction (sales) and use taxes which may apply. A list of counties with special tax districts is included in Pamphlet No. 44 (copy enclosed).

California sales and use taxes do not apply to sales to out-of-state customers which are shipped by common carrier to the out-of-state customers for use out of state. (See Regulation 1620(a)(3)(B), enclosed.) Sales made to California customers are taxable. The "place of sale,"

for purposes of determining which local and district taxes apply, is determined pursuant to Regulation 1805 (local sales and use taxes) and Regulation 1822 (district transactions (sales) and use taxes). Copies enclosed.

Pamphlet 44 and Regulations 1823 and 1827 (copies enclosed) discuss the method for determining which taxes apply when you sell across tax district lines, and your duty to collect district use taxes.

If you are “engaged in business” in a tax district, and either (a) ship or deliver the property into that district, or (b) participate within that district in the sale, you must collect that district’s use tax. The definition of “engaged in business” includes having any type of office, sales room, warehouse, or other place of business, even if indirect or through an agent, the presence of any kind of representative in the district for the purpose of making sales, taking orders, or making deliveries.

You subcontractor’s operations would qualify as “engaged in business” in each district where they are located.

I will apply the above to your specific questions, from page two of your letter. I assume all property sold is shipped by common carrier from an unnamed county (which has no district taxes) as a result of a mail or telephone order. These are summaries only. Each situation will require the application of the regulations.

1.
  - a. --- destination: apply the --- use tax rate.
  - b. California destination outside of ---: apply the use tax rate in effect in that destination, if you are “engaged in business” in that district. If not, no district taxes will apply.
  - c. Out-of-state destinations: not subject to California taxes if shipped out of state by common carrier or your facilities, pursuant to contract of sale.
2.
  - a. The location from which the merchandise is shipped will be one of the locations in which you are “engaged in business.”
  - b. The location from which the merchandise is shipped will be one of the locations in which you are “engaged in business.”
3. Your principal location is one of the locations in which you are “engaged in business.”

By telephone, you requested information concerning shipping and handling charges. Your gross receipts for tax purposes must include delivery charges unless these charges meet the requirements specified in Regulation 1628(a), Transportation by Carrier, copy enclosed. Please note that “handling charges” are subject to tax, as well as charges lumped together, such as

Mr. J--- H---

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“shipping and handling,” or lump-sum shipping charge estimates. Only actual, separately stated transportation charges are exempt.

If you have further questions, please contact me.

Sincerely yours,

Donald L. Fillman  
Tax Counsel

DLF:cl  
Enclosures