

M e m o r a n d u m**800.1350**

To: Mr. Larry Augusta

Date: May 31, 1990

From: John Abbott
Senior Tax CounselSubject: [Name] – SS -- XX-XXXXXX
Final action – local tax allocations

This is in response to your May 11, 1990 memo to Mr. Charles Cordell and Mr. Cordell's May 18, 1990 memorandum to Mr. Bystrom and me. Of the three issues raised by Mr. D--- in the hearing, the one I can address relates to what is referred to as the local tax allocation issue. In my view, these are two separate issues. One issue is whether the Bradley-Burns use tax revenue should be allocated to San Francisco or Sacramento. The second issue is whether there is any district use tax liability, and if so, which district's use tax applies.

Regulation 1803(b) provides in summary that Bradley-Burns use tax applies if property is purchased from a retailer for use in a jurisdiction (city, county or redevelopment agency) and actually used there, provided any one of several conditions exists. One of those conditions is that the sale was exempt from sales tax, but not use tax. Since [Name]'s purchases of the railroad cars were subject to use tax, not sales tax, the effect of Regulation 1803(b) is to allocate the local use tax to San Francisco, not Sacramento, since that is the place where the railroad cars were delivered.

There is nothing new or precedential about this allocation of local tax. Accounts coded "SS", as is [Name], receive Schedule B, Detailed Allocation by County of Uniform Local Sales and Use Tax. Paragraph 6 of the instructions for Schedule B states:

"A person who purchases tangible personal property without payment of a uniform local tax is liable for local use tax on such purchases. If the property is used at a location for which a seller's permit is not required, enter in Column C the amount of local tax for the county in which such tangible personal property is used."

For purposes of the Transactions and Use Tax Law, the tests for determining district use tax liability parallel the tests for determining state use tax liability. Under Regulation 1620(b)(3), if the purchaser first functionally uses property in California, the state use tax applies. If the purchaser first functionally uses property outside of California, and brings it into California within 90 days after purchase, the property is presumed to be purchased for use in California unless it is stored or used one-half or more of the time outside the state in the next six months (principal use test).

The Regulation 1620 functional use and principal use tests also apply to district use taxes. Under Revenue and Taxation Code Sections 7261(a)(2), and 7262(a)(1), the district ordinances which impose transactions and use taxes incorporate by reference the provisions of the Sales and Use Tax Law to the extent that they are not inconsistent. Likewise, the Board's regulations interpreting the specific provisions of Sales and Use Tax Law interpret those same provisions of the Transactions and Use Tax Law. If the purchaser first functionally uses property in a district (or districts, in the case of a county with two districts) then that district's use tax applies, and no other district's use tax can apply. If the purchaser first functionally uses the property outside of any district, but brings the property into a district within 90 days after purchase, and thereafter principally uses the property in that district, that district's use tax applies, and again no other district's use tax can apply. If [Name]'s first functional use of the rail cars occurred in San Francisco County, it is the BART district use tax which applies, and no other district's use tax applies. There is also nothing new or precedential about this interpretation.

JA:jb

cc: Mr. Charles Cordell
Ms. Judy Agan
Mr. Gary Jugum
Mr. Herb Cohen
Mr. Wayne Philpot
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