



STATE BOARD OF EQUALIZATION

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

WILLIAM M. BENNETT
First District, Kentfield

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

October 8, 1992

Mr. L--- W---
President, P---, Inc.
XXXX --- Blvd, Suite ---
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX
Duty to Collect District Use Tax

Dear Mr. W---:

I am responding to your letter of July 29, 1992, to the Legal Division. You asked about the tax rate to be applied to sales to residents of counties outside of Sacramento County who do not pick up the goods at your office but have them shipped.

You indicate that P--- is a mail-order business, and that you have always collected sales tax reimbursement based upon the rate in effect in the county where the customer resides, except for walk-in customers who pay sales tax reimbursement at the Sacramento County rate of 7.75%. You further indicate one of the Board's representatives told you that you are only required to collect the state-wide rate of 7.25% on out-of-county sales, but that it is best to charge tax based on the rate in effect in the customer's county of residence since the customer must pay any tax not collected by P---. You also asked about the rate to be applied to sales to Sacramento County customers who have the goods shipped to them.

You do not indicate how you deliver the goods you sell- whether in your own trucks or by common carrier.

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. & 6201 et. seq.) and the Bradley-Burns Uniform Local Sales and Use Tax (§§ 7200-7212). In 1969, the Legislature enacted the Transactions and

Use Tax Law. (§ 7251 et. seq., hereinafter "District Tax".) Pursuant to various enabling statutes, local jurisdictions are permitted to impose transactions (sales) and use taxes at rates of 0.25% or 0.5% of the gross receipts from the sales within the jurisdiction of tangible personal property sold at retail or of the sales price of property whose use, storage, or consumption with the jurisdiction is otherwise subject to tax. (§§ 7261(a) & 7262(a). Although counties and a city may impose such taxes as well as special districts, we will, for the sake of convenience, refer to all jurisdictions imposing such taxes as "districts.")

2. "Out-of-Jurisdiction" Exemption.

There are some exemptions from the District Tax. Sections 7261 and 7262 require that each district imposing a tax must include in its authorizing 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 where the retailer ships to a point outside its district pursuant to its contract of sale with the purchaser. (§ 7262(a)(6).) In interpreting and applying this exemption, Title 18, California Code of Regulations, Regulation ("Regulation") 1823(a)(2) provides that the transactions tax does not apply to gross receipts from sales of tangible personal 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."

(Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.)

3. Retailer's Duty to Collect.

Whether a retailer not located in a district (or located in a different district than the purchaser) is obligated to collect from the purchaser district use tax 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) 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, delivering, 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 into the district, or participates in the district in making the sale.

B. Tax Consequences to American Ink.

As you note, Sacramento County has one county-wide taxing district - Sacramento County Transportation Authority (STAT). It imposes a transactions and use tax of 0.5% for a combined state and district tax rate of 7.75%.

Since P---' sole place of business is in Sacramento County, that is the place of sale for its products. (Reg. 1822(a)(1).) Your sales to Sacramento County residents (whether or not they pick up the goods at P---' office) or to residents of other counties who pick up their purchases at your office are subject to STAT transactions (sales) tax for a total tax rate of 7.75%.

Sales to residents of counties other than Sacramento where the contract of sale requires that the goods be shipped out of Sacramento County are exempt from its district transactions tax. If the county of destination has no taxing districts, then only the state-wide rate of 7.25% applies. On the other hand, if it has one or more such districts, then the sale will be subject to the district use tax(es) in effect in that county. The buyer is liable for use taxes whether or not P--- collects them. The question is whether or not P--- must do so.

You indicated that P--- has no place of business other than the Sacramento office but did not indicate how it gets its goods to its customers nor if people market its products in any other county. We conclude from the remark you mentioned as being made by a Board representative that P--- need collect only the statewide rate of 7.25%; however, that P--- does not regularly deliver its goods outside Sacramento County in its own trucks nor have sales agents operating in other counties. It is thus not considered under Regulation 1827(c) to be engaged in business outside of Sacramento County and so need not collect the use tax for any district into which it ships its goods.

For your information, I have included a copy of Board of Equalization Pamphlet No., 44-A, "Questions and Answers on District Taxes," and Regulations 1822 and 1823. 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
Tax Counsel

JLW:es

Enclosure: Pamphlet 44-A
Regs. 1822 & 1823