



STATE BOARD OF EQUALIZATION

(916) 324-38287

July 24, 1991

Ms. --- ---
S--- ---
XXXXX --- --- ---
--- ---, California XXXXX

RE: S- -- XX-XXXXXX

Dear Ms. ---:

The Legal Division has assigned your letter of June 10, 1991, to me for response. You have requested advice regarding the proper rate of sales and use tax to apply to S---'s sales.

I. FACTUAL BACKGROUND

You set forth the factual background of your problem as follows:

“BACKGROUND: S--- is a manufacturer of trade show displays located in [city], California (--- County 1). We employ a salesman who works out of his home in [city 2], California (--- County 2). 100% of our orders are filled in [city 1] and all are F.O.B. [city 1]. S--- does not ship or deliver the product from --- County 1. This is solely the responsibility of the customer.”

The goods appear to be located in [city 1] at the time S---'s salesman makes his sales. We assume that the salesman makes all of his sales in --- County 2 but that some of his customers may reside outside --- County 2 and that you are requesting advice regarding only sales made by the --- County 2 salesman. We further assume that your statement that S--- does not deliver the product means that the customer arranges at the time of sale for a common carrier to ship the goods from [city 1] to him.

II. OPINION

A. Transactions and Use Tax

1. Generally

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) There is a statewide tax of 7%. 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 more than one) 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). There may be two or more districts in certain counties so that the combined rate may equal up to 1%.

--- County 1 does not have a taxing district. --- County 2 has two, for a combined district tax rate of 1%.

2. "Out-of-District" Exemption

These 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 where 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) 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."

B. Tax Consequences

Your letter indicates that, although S---'s salesman makes his sales in [city 2], the goods remain in, and are shipped from, [city 1]. The "place of sale" for determining the applicability of state taxes is the place where the goods are located at the time that the sale takes place. (§ 6010.7; II Bus. Tax. L. Guide, Annot. 495.0680. Annotations are excerpts from previous Board staff opinion letters and serve as a guide to staff positions.) For district tax purposes, then, the place of sale is --- County 1. (Reg. 1822(a)(1).) Because the place of sale is not located in --- County 2 taxing districts, those districts' transactions (sales) taxes do not apply to those sales.

However, because S--- has a salesman located in --- County 2, S--- is "engaged in business" there. S--- must collect that district's use tax when its goods are sold to --- County 2 residents. (Regs. 1823(b) & 1827(c).) If, however, sales are made to residents of another county and the goods shipped out of --- County 2 pursuant to the contract of sale, the sale is exempt from the --- County 2 district tax. If the customer resides in another taxing district, he is liable for that district's use tax, but unless S--- is engaged in business, as defined above, in the customer's taxing district, it is not liable to collect that tax.

Thus, S--- must collect district use tax for all sales made to residents of --- County 2, for a combined tax rate of 8%. If sales are made to persons who reside outside of --- County 2 but not in another taxing district, only the state-wide rate of 7% applies. If S--- sells to people who live outside --- County 2 but in another district (or districts), it is not required to collect that district's use tax on top of the state-wide rate unless it is engaged in business there.

For your information, I have enclosed copies of Board of Equalization Pamphlet Nos. 44, "District Taxes," and 44-A, "Questions and Answers on District Taxes," which include copies of the above-mentioned regulations. 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

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Enclosures: Pamphlets 44 & 44-A