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September 27, 1994

Ms. D--- G. K---, Tax Specialist
 [Name], Inc.

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---, NJ XXXXX

Attention: Tax Department

Re: [Name], Inc.
 SZ -- XX-XXXXXX

Dear Ms. K---:

This is in response to your letter dated June 30, 1994. You ask about a particular set of facts concerning [Name] (----) in which [Name] takes an order for tangible personal property in New Jersey, and the order is shipped from a third party warehouse in [city 1], California, to a retail customer in [city 2], California. You ask what sales tax rate the customer should be charged, and where the sale should be reported on the local and district schedules of the quarterly sales and use tax return.

We assume that the tangible personal property ordered from [Name] in New Jersey and shipped from the [city 1] warehouse to the [city 2] customer is an automobile.

SALES AND USE TAX LAW GENERALLY

The California Sales Tax is imposed on all retailers measured by their gross receipts from retail sales of tangible personal property in this state, unless the sale is otherwise excluded or exempted by statute. (Rev. & Tax. Code § 6051.) Gross receipts means the total amount of the sale, lease, or rental price of the retail sales of retailers, valued in money whether received in money or otherwise. (Rev. & Tax. Code § 6012.) A sale means and includes any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for consideration. (Rev. & Tax. Code § 6006.) A retail sale means a sale for any purpose other than resale in the regular course of business in the

form of tangible personal property. (Rev. & Tax. Code § 6007.) When sales tax does not apply, use tax is imposed upon the sales price of property purchased from a retailer for use, storage, or other consumption in California. A retailer engaged in business in this state must collect the use tax from the purchaser and pay it to this state. (Rev. & Tax Code §§ 6201, 6203.) Retailer includes every seller who makes any retail sale or sales of tangible personal property and every person engaged in the business of making retail sales of tangible personal property owned by the person or others. (Rev. & Tax. Code § 6015.) This means that sales or use tax is imposed on the gross receipts of the retail sales of retailers, upon the transfer of title or possession of tangible personal property from the seller to the purchaser for consideration in this state, unless the sale is excluded or exempted by statute. A retailer who is engaged in business in this state must collect the use tax from the purchaser and pay it to this state.

PLACE OF SALE

The initial question here is when and where the [Name] sale to the customer took place. Revenue and Taxation Code section 6010.5 states:

“For the purposes of this part, the place of the sale or purchase of tangible personal property is the place where the property is physically located at the time the act constituting the sale or purchase, as defined in this part takes place.”

This means that the sale takes place where the property is physically located at the time the act of conveyance takes place. Based on the facts provided, [Name] had the property shipped from a third party warehouse in [city 1], California to a [city 2] customer. Since the property was physically located in [city 1], California, at the time that the act of conveyance occurred, the sale took place at [city 1], California and sales tax applies to the sale price.

DROP SHIPMENT

Revenue and Taxation Code section 6007, in pertinent part, provides that:

“When tangible personal property is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner or factor to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price.”

This is explained in Business Taxes Law Guide Annotation (BTLG Annot.) 175.0150 (12/23/75) which, in pertinent part, states that:

“Section 6007 [Revenue and Taxation Code] basically provides that the delivery of tangible personal property to a consumer in California by the owner or his agent pursuant to a retail sale made by a retailer not engaged in business in this state is a retail sale by the person making the delivery....”

This means when a person delivers property directly to a California consumer pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the delivery is deemed to be the retailer and must report tax on the retail sale price. The duty to pay sales tax or collect and remit any use tax is on such a person making the delivery.

Based on the facts provided, the delivery from a third party warehouse located in [city 1], California, to the [city 2] consumer is made pursuant to the direction of [Name], meaning the delivery person is a California agent of [Name]. Based on the statutory mandate that the person making the delivery has made a taxable retail sale, the delivery person then has made a retail sale and has the statutory duty to collect and pay the sales tax on the gross receipts of the sale price.

DISTRICT TAXES

Districts, usually coterminous with counties, may adopt an additional sales tax of up to 1-1/2% over the statewide sales tax rate of 7.25% pursuant to the Transactions and Use Tax Law. (Rev. & Tax. Code § 7251, et seq.) A district's sales tax is applicable to the gross receipts of sales occurring in that district unless the sale is otherwise exempt from the district sales tax. A district's use tax is applicable to the purchases of property for use in that district. The district sales tax does not apply to gross receipts from the sale of property to be used outside the district when the property is shipped to a point outside the district, pursuant to a 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. (Reg. 1821(2).) Retailers of vehicles, undocumented vessels, and aircraft described in Regulation 1827(c)(4)¹ are engaged in business in a district imposing state administered transactions use tax and are required to collect the use tax from the purchaser and pay it to the board when such vehicles, aircraft, and undocumented vessels are registered and licensed in that district. (Regs. 1821(5) and 1823.5(a).) The property is regarded as purchased for use in the district in which it is registered, if it is a vehicle, aircraft or undocumented vessel. (Reg. 1827(b)(3).)

¹“Retailer engaged in business in district” includes any of the following:

“(4) on and after January 1, 1988, any retailer of vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code,”

Based on the facts provided and our assumption that the property ordered from [Name] is an automobile, when the automobile is shipped, pursuant to a contract of sale, from the [city 1]warehouse located in Orange County, to Los Angeles County to the consumer, the sale is exempt from district transactions taxes imposed in Orange County and is subject to district use tax in Los Angeles County. The applicable use tax rate in Los Angeles County is 1%. Thus, the customer should be charged use tax at a 1% rate of the gross receipts of the sale price of the automobile, for a total rate of 8.25%.

REPORTING USE TAX

You asked about how to report use tax on local and district schedules. By copy of this letter we refer your request for information to Mr. Larry Micheli, Supervisor of the Local Tax Section, for a response, since this is not regarded as a legal question.

We enclose copies of the pamphlets "Tax Tips for District Taxes," and "California City and County Sales and Use Tax Rates." We know that in addition to automobiles, [Name] also sells trucks, buses, and component parts. If our assumption is wrong, and the sale referred to in your letter was not of an automobile, please write again, sending copies of the relevant contract and other documents. If you have further questions, feel free to write again.

Sincerely,

Pat Hildebrand
Staff Counsel

PH:cl

Enclosures

cc: Out-of-State District Administrator
Mr. Larry Micheli, Supervisor, Local Tax Section