



STATE BOARD OF EQUALIZATION
(916) 445-6493

May 31, 1990

Mr. REDACTED TEXT, Owner
San Leandro, CA 94577

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District taxes – collection by retailer

Dear Mr. REDACTED TEXT:

In your April 4, 1989 letter to the Board's legal staff, you request written guidance on the following matter:

“As a small mail order company selling home brewing supplies to residents of every California County, we are confused regarding our obligation to collect local district taxes from counties [in] which we do not have a physical presence or salesperson.

“We send out mail order catalogs and then ship the ordered goods via UPS to the residents of every county in California. Does this sending of catalogs through the mail constitute a physical presence? According to Article 5 (page 3 of your newsletter enclosed), it appears we do not have to collect district taxes (except in Alameda, where we are located).”

Opinion

Under the Transactions and Use Tax Law, Revenue and Taxation Code Sections 7251 et seq., the district transactions (sales) taxes are imposed by countywide special taxing districts; in California on retailers making sales at the retailer's place of business in these counties. Some counties have one district and other counties have two districts; each of these districts imposes the tax at a rate of one-half percent. If a retailer makes a sale at a place of business not within any district, that sale is not subject to district transactions tax. Also, if a retailer located in a district (or districts) ships or delivers the property sold outside of the district, pursuant to a contract of sale with the purchaser, that sale is also exempt from the district transactions tax. (Regulation 1823(a).) Like the state sales tax, the district transactions tax is imposed on retailers, and whether a retailer collects tax reimbursement from the purchaser is a matter of contract between the retailer and the purchaser. (Civil Code Section 1656.1.)

If a purchaser purchases tangible property from a retailer, for storage, use, or consumption of that property within a district (or districts) which imposes a transactions and use tax, the purchaser is

liable for the district use tax, and is entitled to a credit against that use tax obligation for tax reimbursement (if any) paid to a retailer for district transactions tax. (Regulation 1823(b).) Whether a retailer not located in a district (or located in a different district than the purchaser) is obligated to collect the district use tax from the purchaser depends upon whether the retailer is "engaged in business" in the purchaser's district, as defined in Regulation 1827. In summary, Regulation 1827 provides that if a retailer has either a place of business in a district, or has representatives or agents operating in a district, for the purpose of selling, delivering, or taking orders for tangible property, then the retailer is obligated to collect that district's use tax from the purchaser if the retailer ships the property sold into the district, or participates in the district in making the sale.

Our opinion is that your sending catalogs to prospective customers by mail does not constitute the type of activity which would make you a retailer engaged in business in districts other than the ones in which your place of business is located. Therefore, you do not have to collect the district use taxes owed by your customers for their use in their districts of the tangible property purchased from you.

You are obligated to report and pay district transactions taxes on your sales to customers in two districts: the Alameda County Transportation Authority (ACTA) (Alameda County only) and the Bay Area Rapid Transit District (BART) (San Francisco, Contra Costa, and Alameda counties). If you ship the property sold to a customer in San Francisco or Contra Costa County, you are not liable for Alameda district transactions tax on that sale, since you shipped the property sold outside of Alameda County, but you are still liable for the BART district transactions tax since your sale was made in the BART District. Both taxes are imposed at a rate of 1/2 percent.

I enclose a copy of the Board's Tax Tip pamphlet 44, District Taxes, which includes copies of Regulations 1823 and 1827, for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Senior Tax Counsel

JA:cl
Enclosure
bc: Oakland District Administrator