

**STATE BOARD OF EQUALIZATION**

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April 21, 1992

REDACTED TEXT

RE: REDACTED TEXT
District Transactions Taxes

Dear REDACTED TEXT:

I am responding to the letter you wrote to Assistant Chief Counsel Gary J. Jugum on March 20, 1992. You requested a ruling regarding the application of district taxes to REDACTED TEXT's business practices. We note that the Board Staff cannot issue tax rulings; only the Board itself may do that. However, we can give you our opinion regarding the correct application of tax to a given set of facts.

I. FACTUAL BACKGROUND

As I understand it, REDACTED TEXT is a machinery manufacturer whose headquarters is apparently located in Minnesota. You describe the California operation as follows:

“A) REDACTED TEXT ships replacement parts from out Santa Rosa, CA. factory via common carrier to all counties in Calif. and the USA. We do not own delivery trucks and ship all orders prepaid.

“B) REDACTED TEXT manufactures, also in Santa Rosa, large custom machines and will ship them via common carrier to the same locations noted above.

“All of these major machines are designed, costed and appropriate prices established at our Lab/Engineering Center located in the State of Minnesota. This is where all official price quotes originate and from where official order acceptance occurs. With respect to spare

parts the parts service department, located in Santa Rosa, establishes prices, reviews customer terms, and accepts orders for all standard REDACTED TEXT parts.

“The ‘gray area’ of our situation is that we do have a ‘salesman’ whose office is located in Santa Rosa and who is responsible for the eight (8) western states. He does not have authority to accept orders on REDACTED TEXT” behalf, but functions as a ‘go between’ for the customer and our other departments i.e., parts or Minn. application engineering. This situation exists because all of our machines are custom designed per customer specifications. Consequently, the salesmen cannot accurately estimate selling price.”

District tax consequences attach only to sales within California. Sales to customers outside of California are exempt from tax when, pursuant to the contract of sale, the manufacturer ships the goods to the purchaser outside the state. (Rev. & Tax. Code § 6396. Unless otherwise stated all further statutory citations are to the Revenue and Taxation Code.)

II. 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., 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 countywide taxing districts. To support such district, 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 there is more than one in a county) 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).

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)(5).) In interpreting and applying this exemptions, 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 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. Retailer’s Duty to Collect District Use Tax

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(b)(1) and (c) 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 personal 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.

C. Tax Consequences to REDACTED TEXT

You indicate that REDACTED TEXT has only one place of business in California. The machines are manufactured and the spare parts are sold in Santa Rosa which is thus the place of sale of these items for district tax purposes. (§ 6010.5; Reg. 1822(a)(1).) Santa Rosa is in Sonoma County which has one countywide taxing district imposing a district tax at the rate of 0.25%. Sales to residents of Sonoma County or to purchasers who pick up the machines at your Santa Rosa office are thus subject to the Sonoma County transactions (sales) tax for a total rate of 7.50%.

Sales of goods which are shipped out of Sonoma County pursuant to the contract of sale are not subject to its transactions tax under the above authority. If the buyer’s county of residence has not countywide taxing district, the tax rate is only to the statewide tax rate of 7.25%. Sales of goods sent to a county with one or more such districts are subject to its district use tax(es), however. Under the above authority, the purchaser is always liable for use taxes, but the retailer has a duty to collect them only if it is engaged in business in the purchaser’s district(s).

You state that you have a salesman operating out of Santa Rosa. We assume that he travels throughout his sales area lining up customers and handling the California activities involved in REDACTED TEXT’s sales. Per the above authority, then, REDACTED TEXT is engaged in business in the counties in which the salesman operates and so is required to collect their district use taxes, if any. The tax rate applicable to these sales depends on the district use tax rate in effect in the county of destination.

For your information, I have enclosed copies of Board of Equalization Pamphlet No. 44-A, Questions and Answers on District Taxes,” and Regulations 1822, 1823, and 1827. I hope the above discussion answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JWL:es
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Encs.: Pamphlet 44-A
Regulations 1822, 1823, and 1827

bc: Santa Rosa District Administrator