



**STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)**

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August 31, 1994

Ms. J--- D---
S--- I--- S---, Inc.
G--- S---
XXXXX --- --- ---, Suite XXX
--- ---, California XXXXX

BURTON W. OLIVER
Executive Director

Re: SR -- XX-XXXXXX
Collection of District Tax

Dear Ms. D---:

On June 21, 1994, Ms. Letitia P. Salcedo of our Return Review Section forwarded your March 4, 1994 letter to the Legal Division for a response. You ask when it is appropriate to collect the use tax of a county into which G--- ships its products and which has one or more countywide taxing districts.

According to your letter, G--- is located in --- --- County only and solicits buyers via direct mail, word of mouth, and by doing presentations. You indicate that there are occasions when G--- demonstrates its software at its client's (or potential client's) headquarters in New York and collects state sales tax when sales are made to their divisions in Los Angeles. You further indicate that your products are shipped by common carrier. In her memorandum, Ms. Salcedo indicates that G--- made one delivery into Los Angeles County in Fourth Quarter 1993 and collected Los Angeles County district use tax from that purchaser. Apparently, that delivery was an isolated event. Ms. Salcedo asks if that one delivery qualifies G--- as "engaged in business" in Los Angeles County for all sales thus requiring G--- to collect district use sale on all its sales into Los Angeles County.

OPINION

A. Transactions and Use Tax

1. Generally

As you are aware, 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 (“District”) Tax Law. (§ 7251 et. seq.) Under enabling statutes in various codes, local jurisdictions may 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 few cities may impose such taxes, for the sake of convenience, we refer to all entities imposing such taxes as “districts.” No matter where the enabling authority is found, all district taxes are administered by the Board under the District Tax Law. Los Angeles County has one district which imposes two district taxes, thus giving a combined tax rate of 8.25%

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. (§ 7261(f).) 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.”

(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 to the purchaser in the district, or participates in the district in making the sale.

C. Tax Consequences to G---.

To determine if a retailer is engaged in business in a district, we must look at the number, scope, and character of its contacts with the district. Under Regulation 1827(b)(1), where a retailer makes regular deliveries of property into a taxing district, it is engaged in business there under Regulation 1827(c)(2) and must collect use tax on its sales in the district. (Annot. 800.0900. Sales and Use Tax Annotations are excerpts from previous Legal staff opinion letters and serve as a guide to staff positions.) If the retailer makes only isolated deliveries into a district, we do not consider that it is engaged in business there so as to incur the duty to collect use tax. (See, e.g., Miller Bros. v. Maryland (1954) 347 U.S. 340, 347.) We do not need to define the term "regular deliveries" here since it seems to be undisputed that G--- made only one delivery into Los Angeles County during the period under review. G--- was not required to collect use tax on the one delivery it made into Los Angeles County but voluntarily did so. Though the purchasers still owe use tax on their purchases that G--- ships in, G--- has no duty to collect it. Should its contacts with Los Angeles County increase in number, scope, and character, G--- would be considered "engaged in business" there under the regulation and would have to collect Los Angeles County district use taxes on its sales which it ships into the county.

For your information, I have included copies of Board of Equalization Pamphlet No. 44, "District Taxes," and of Regulation 1827. 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

Enclosures: Pamphlet 44
Reg. 1827

cc: Ms. Letitia P. Salcedo (MIC:35)
--- --- District Administrator