



STATE BOARD OF EQUALIZATION

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February 17, 2005

Mr. R. S--- C-XXXXX
M---'s A--- C--- Chairman
C--- T--- F--- (North)
P.O. Box XXX ---XXX-
---, CA XXXXX-XXXX

Re: Request for Use Tax Opinion

Dear Mr. S---:

This letter is in response to your letter of August 18, 2004, forwarded to us from the Franchise Tax Board. In that letter you requested information regarding the proper application of the sales and use tax law to inmate purchases.

Specifically, your letter asks the following, in pertinent part:

“1. We believe C--- t--- F--- is wrongfully collecting USE TAX on items purchased out of state by inmate purchasers. According to the Sales and Use Taxes Code, and the Revenue and Taxation Code, any USE TAX is required to be collected by the **retailer**, and the **retailer** is to give a receipt for the collected USE TAX to the purchaser. However, CTF collects a USE TAX of 7.25% from inmates when inmates purchase items out of state. [¶] . . . [¶] Neither CDC, or CTF is a retailer as defined in [Revenue and Taxation Code] § 6203 (c)(1) through (9), or as defined in the REVENUE AND TAXATION CODE, § 6203. . . Therefor[e], there appears to be no legal authority for CTF to collect USE TAX at all.

“2. If there is a tax to be collected it must be listed separately by the **retailer** somewhere on their order form, and on the receipt the **retailer** gives for the items purchased. [¶] . . . [¶] There is no USE TAX listed in the catalogs inmates order from here at CTF, as would be required under the above citation [Revenue and Taxation Code section 6206] if such a tax was required. Nor does the receipt received from the retailer list any USE TAX collected. CTF has no authority to collect a USE TAX as they do not act as a retailer or as an agent to any such retailer.

“3. If CTF is submitting the collected USE TAX to the State Franchise Tax Board [*sic*: Board of Equalization], and the board is thereafter returning the assets to CTF, CTF is failing to reimburse those assets to the inmate who they were collected from for the purpose of USE TAX, and the assets are applied to some other purpose not declared.”

Discussion:

Based upon the statements made in your letter, I understand you to be asking whether the California Department of Corrections (“CDC”) or the Correctional Training Facility (“CTF”) in --, California, are authorized by the Sales and Use Tax Law to collect use tax on inmates’ catalogue purchases from out-of-state retailers who do not collect the use tax from the inmates. Also, I understand you to be asking whether either entity is guilty of embezzlement for collecting such taxes without authorization. As explained more fully below, CDC and CTF are authorized to collect use tax on inmates’ catalogue purchases from out-of-state retailers who do not collect the inmates’ use tax, and are likely not embezzling funds from inmates in connection with the collection of such taxes. However, the Board of Equalization is not charged with enforcing the Penal Code and cannot render any opinion regarding whether embezzlement of any kind has occurred.

California imposes a sales tax on retailers. The sales tax is measured by an individual retailer’s gross receipts from the retail sale of tangible personal property¹ in this state. (Rev. & Tax. Code, § 6051.) The sales tax is imposed directly on retailers, but retailers may collect reimbursement from their customers if their contracts for sale so provide. (Civ. Code, § 1656.1; and Cal. Code Regs., tit. 18, § 1700.)

When sales tax does not apply to a sale of tangible personal property, use tax will be imposed on the storage, use, or other consumption in California of tangible personal property purchased from any retailer for storage, use, or other consumption in California. (Rev. & Tax. Code, §§ 6201 and 6401.) The use tax is imposed directly on the person actually storing, using, or otherwise consuming tangible personal property purchased from a retailer (i.e., purchaser) and such person’s use tax liability is not satisfied until it is paid to the State of California or to a retailer the Board of Equalization has authorized to collect such tax. (Rev. & Tax. Code, § 6202(a).) In cases where use tax is imposed, but the retailer does not collect the use tax from the purchaser, it is the responsibility of the purchaser to make sure the use tax is paid to the State of California.

When an inmate at CTF orders tangible personal property via a catalogue from an out-of-state retailer and has the property shipped to California, the sale does not occur in California and sales tax does not apply. However, the tangible personal property is being purchased for storage, use, or other consumption in California, and therefore the use tax applies.

¹ Tangible personal property “means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.” (Rev. & Tax Code, § 6016.)

If the out-of-state retailer collects the use tax from the inmate, the inmate's use tax liability is satisfied. If the out-of-state retailer does not collect the use tax from the inmate, the inmate must pay the use tax to the State of California. Since CDC and CTF are instrumentalities of the State of California, they can legally facilitate the inmate's payment of his use tax liability to the State of California. Therefore, it is appropriate for CDC and CTF to collect an inmate's use tax and remit such tax to the Board of Equalization where the inmate has not paid such tax to its retailer.

I hope this answers your questions. If you have additional questions regarding the application of California's Sales and Use Tax Law, please write to the Board of Equalization again.

Sincerely,

Bradley M. Heller
Tax Counsel

BMH:ef

cc: --- --- District Administrator (--)