

**STATE BOARD OF EQUALIZATION**

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December 20, 1989

Mr. J--- B. E---, Jr.  
Law Offices of K--- and D---  
XX --- Avenue  
---, NJ XXXXX

Dear Mr. E---, Jr.:

As you know, your August 11, 1989 letter to Chief Counsel Glenn L. Rigby of the Franchise Tax Board has been referred to this office for reply. You asked for the application of sales and use tax to charges by a New Jersey corporation's production and sale of notepads. You explained the transaction as follows:

"The Taxpayer, a New Jersey corporation doing business solely within New Jersey, (the 'Corporation') is to be retained by certain businesses for the production of special order notepads. These pads will bear the name of a participating college or university and the name of the sponsoring business. The printed and bound pads will be distributed in bulk to the participating college or university for distribution to its entire student body as part of the school's registration package. Raw material for the pads (i.e. paper, backing board, ink, adhesives, etc) will be purchased by the Corporation and used in the production process. All production and bulk packaging will be conducted in New Jersey. The bulk pads will be delivered to each participating college or university by common carrier. Each pad sponsor will pay to the Corporation a price for each pad together with a distribution royalty (also priced on a per pad basis). The distribution royalty will be then forwarded by the Corporation to the participating college or university. Sponsors will include those doing business in California and those which do not. Delivery of the pads in bulk will be made to colleges and universities both within and outside of California."

Since it is the corporation which sends payment of the royalty to the participating college or university ("College" herein), we assume that the corporation, rather than the sponsor, contracts with the college for the college to distribute the notepads. Given this information, you asked the following

- “1. Whether the Corporation is required to pay sales or use tax to California with respect to the pads delivered into California.
- “2. Whether the Corporation’s customer/sponsor is required to pay sales or use tax to California with respect to the pads delivered into California.
- “3. If the Corporation’s customer/sponsor is required to pay sales or use tax to California, whether the Corporation is required to collect such tax and remit it to California.
- “4. If the Corporation or its customer/sponsor is required to pay sales or use tax to California, what is the measure of the tax due.”

California sales tax is imposed on retailers for the privilege of selling tangible personal property at retail in this state. In order for a sale to be subject to sales tax, however, there must be participation in the sale by a California branch, office, outlet or other place of business of the retailer or by any agent of the retailer having any connection with such place of business. Since the corporation has no place of business in California, its sales would not be subject to sales tax. (Sales and Use Tax Reg. 1620, Interstate and Foreign Commerce, subd. (a)(2)(B). However, Revenue and Taxation Code section 6201 provides for a use tax “imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer...for storage, use or other consumption in this state.”

Retailers engaged in business in this state, as defined in section 6203 of the Revenue and Taxation Code, and making sales of tangible personal property, the storage, use, or other consumption of which is subject to the tax must register with the Board and, at the time of making the sales, or, if the storage, use, or other consumption of the tangible personal property is not then taxable, at the time it becomes taxable, collect the tax from the purchaser and give the purchaser a receipt therefore. (Rev. & Tax. Code § 6203; Sales and Use Tax Reg. 1684, Collection of Use Tax by Retailers.)

“Retailer engaged in business in this state” as used in section 6203 means and includes “any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property.” (Rev. & Tax. Code § 6203, subd. (b).) Since the corporation pays the colleges a distribution royalty for delivering the notepads as part of the registration packets, we believe that the colleges act as agents operating in this state under the authority of the corporation for the purpose of delivering tangible personal property. Therefore, we conclude that the corporation is a “retailer engaged in business in this state” for purposes of the Sales and Use Tax Law, and the corporation is required to collect the use tax from the sponsor measured by the sales price of notepads delivered in California.

The combined state and local sales and use tax rate in California is currently 6 ¼%. There are a number of counties which impose district transactions and use taxes as well. The corporation is not required to collect such district taxes on its sales in California (See Revenue and Taxation Code section 6203, subdivision (j)); however, the corporation may collect the applicable district use tax and remit it to the Board on behalf of the customers. (Transactions and Use Tax Reg. 1827.)

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick  
Tax Counsel

RLD:sr