

M e m o r a n d u m**325.0011.450**

To: Mr. Larry Micheli, Supervisor
Local Tax Unit

August 11, 1989

From: John Abbott

Subject: S--- Medical Systems, Inc. – SZ --- XX-XXXXXX
Bradley-Burns tax allocations – deliveries from seller's
California warehouse

In your July 7, 1989 memorandum to me, you attached a copy of a June 29, 1989 letter from Mr. R--- H--- to you, which questions the allocation of Bradley-Burns tax on certain transactions of S---. There is no question that tax applies to these transactions, but the issue is whether the applicable tax is the sales tax or the use tax. If the sales tax applies, the local tax portion will be allocated to the cities of C--- and B---, where S--- has retail outlets. If the applicable tax is the use tax, however, the local tax portion is allocated on a countywide basis to the county in which S---'s customer is located. You relate that S--- allocated the sales to C--- and B---, but our audit staff reallocated these sales countywide as use tax, because the property was shipped f.o.b. shipping point from out-of-state locations. Mr. H---, however, notes that there was involvement by California based S--- personnel prior to delivery to the purchaser, because the equipment sold often requires rigging or installation.

You write:

“Mr. H---’s concern is that while the majority of the equipment is shipped f.o.b. shipping point from out-of-state locations, the equipment often requires either rigging or installation and is dropped shipped to warehouse locations determined by the seller for assembly/consolidation prior to delivery to the customer. Does this ‘involvement’ prior to delivery to the delivery to the purchaser result in the sale occurring in the state subject to sales tax rather than use tax?”

“We have reviewed your July 27, 1987 letter to Mr. J--- A--- of M---, copy attached. In the last paragraph on Page 2 and following it is stated that under Revenue and Taxation Code 6010.5, the place of sale is the place where the tangible personal property is physically located at the time the act constituting the sale occurs. In this case the property was located outside California at the time of

sale but shipped to warehouses in this state prior to delivery to the purchaser. Is this a sales tax transaction in which case the local sales would be allocabel to the branch offices where the sales were negotiated?"

Opinion

Where the taxpayer ships the property sold by common carrier from a point outside of California directly to the customer in California, the applicable tax is normally the use tax, not the sales tax, regardless of whether there is any local involvement by the taxpayer in the sale. In this case the sale occurs at the time and place of shipment out of state, and the sales tax cannot apply when the sale occurs out of state. (Reg. 1620(a)(2)(A)). The sales tax would only apply if the taxpayer ships the property f.o.b. destination and if a local place of business of the taxpayer participates in the sale by rigging or installing the property sold at the customer's location. Otherwise, the applicable tax is the use tax, regardless of participation by the taxpayer's local place of business in rigging or installing the property sold.

On the other hand, where the taxpayer ships the property sold to its warehouse location in California, which assembles or consolidates the property sold, and that warehouse location is the point from which the shipment is made to the customer, then the sales tax is the applicable tax. This is because the sale was completed in California by the taxpayer's shipment to the customer from a California location, and there was also participation by a place of business of the taxpayer, specifically its warehouse, in completing the delivery and installation of the property at the customer's location. The place of sale as defined in Revenue and Taxation Code Section 6010.5 is not the taxpayer's out-of-state location if the taxpayer does not complete its obligation with respect to delivery without first sending the property to its California warehouse.

JA:jb

cc: Mr. E. L. Sorensen, Jr.