



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 324-2637
FAX: (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

KATHLEEN CONNELL
Controller, Sacramento

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

June 26, 1997

Mr. --- ---
N--- F--- A---, Inc.
XXXX --- ---
---, California XXXXX

Re: Teflon Coating

Dear Mr. ---:

This is in response to your May 15, 1997 facsimile asking how tax applies to your company's teflon (fluorocarbon) coating operations.

You state:

“Our customers are located all over the USA, including California. Our customers will send us equipment and machinery used in their factories for manufacturing various products like chemicals and semiconductors. This equipment and machinery could be either new or used. Our function is to apply a coating of Teflon (Fluorocarbon) to this equipment. The purpose of the coating is to provide protection against corrosion, static build-up and anti-abrasion properties. This process is similar to painting. We shall bill our customers a lump sum based on the size of the surface area coated and grade of coating. The freight charges will be paid directly by the customer.”

You ask a series of questions based on the above facts. For purposes of clarity, we have separately responded to each of your questions below.

“1. Does the sales tax apply to us?”

California imposes sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A sale includes any transfer of title or possession of tangible personal property, or the producing, fabricating or processing of tangible personal property for consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating or processing. (Rev. & Tax. Code § 6006.) Taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of materials, service, or expense of the retailer passed on the customer unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.)

You state that your company will apply teflon coatings to new and used equipment furnished by its customers pursuant to a process similar to painting. We regard the coating or painting of new equipment as the taxable fabrication of property furnished by the customer. (See Rev. & Tax. Code § 6006(b).) In particular, Regulation 1524(b)(3) provides that tax applies to charges for painting, polishing, and otherwise finishing tangible personal property, whether the article to be finished is supplied by the customer or by the finisher. This means that your company must report and pay sales tax to this agency on its charges for coating new equipment furnished by your customers unless the sale is otherwise exempt. (See our response to question three below.)

The application of tax to your company's charges for coating "used" (not new) equipment is found in Regulation 1546:

“(a) Charges for labor or services used in installing or applying the property sold are excluded from the measure of the tax. Such labor and services do not include the fabrication of property in place.

“(b)(1) If the retail value of the parts and materials furnished in connection with repair work is more than 10 percent of the total charge, or if the repairman makes a separate charge for such property, the repairman is the retailer and tax applies to the fair retail selling price of the property.

“If the retail value of the property is more than 10 percent of the total charge, the repairman must segregate on the invoices to his customers and in his records the fair retail selling price of the parts and materials from the charges for labor of repair, installation, or other services performed. ‘Total charge’ means the aggregate of the retail value of the parts and materials furnished or consumed in making the repairs, charges for installation, and charges for labor of repair or other services performed in making the repairs, including charges for in-plant or on-location handling, disassembly and reassembly. It does not include pick-up or delivery charges.

“If the retailer does not make a segregation, the retail selling price of the parts and materials will be determined by the board based on information available to it.

“(2) If the retail value of the parts and materials furnished in connection with the repair work is 10 percent or less of the total charge, as defined in (b)(1) above, and if no separate charge is made for such property, the repairman is the consumer of the property, and tax applies to the sale of the property to him.

“....”

This means that your company is the consumer of the teflon coating furnished in painting used equipment if the retail value of the coating (and any other materials) furnished under the contract is not greater than 10 percent of the total lump sum charge. Where this occurs, tax applies only to the selling price of the teflon to your company. If, however, your company separately states its charges for the coating (and any other materials) regardless of the value of that coating (and other materials), or if the value of the coating (and other materials) exceeds 10 percent of your company's total charge, your company is the retailer of the coating (and other materials). In this type of situation, tax applies to your company's charges from the sale of the coating (and materials), but not to the repair (painting) labor performed by your company.

“2. If the sales tax does not apply to [us] do we still need to obtain a seller's permit?”

As set forth above, tax applies to the charges for your company's coating when you perform this process on new equipment or when you perform this process on used equipment under certain circumstances. As a seller of tangible personal property, you are required to obtain a permit for your operations. (Rev. & Tax. Code § 6066.) You should contact you nearest board office to obtain the necessary paperwork in order to obtain a seller's permit.

“3. If the sales tax applies to us do we collect sales tax from out of state customers?”

Revenue and Taxation Code section 6396 exempts sales in this state from sales tax when goods are shipped outside the state under specific conditions. These conditions are explained in Regulation 1620(a)(3)(B) as follows:

“Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

“1. Facilities operated by the retailer, or

“2. Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term ‘carrier’ means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term ‘forwarding agent’ means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a ‘carrier’ or ‘forwarding agent’ within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state....”

Thus, tax does not apply to your company’s charges for teflon coating where, pursuant to your contract of sale, your company ships the coated items outside the state by common carrier (e.g., U.S. Mail, Federal Express, U.P.S., etc.) and neither your customer nor your customer’s agent obtains possession of the property inside this state. Tax does apply to the gross receipts your company receives from its coating of items (as set forth in our response to question one above) that are shipped to your customers inside this state.

“4. If the sales tax applies to us do we collect sales tax from California customers at rates applicable in Alameda County?”

Some background may be helpful in understanding our response to this question. California has a statewide tax rate of 7.25 percent. This rate is made up of the California Sales and Use Tax (Rev. & Tax. Code § 6001 et. seq.) and the Bradley-Burns Uniform Local Sales and Use Tax (Rev. & Tax. Code § 7200 et seq.). Any tax above 7.25 percent is imposed by specially created taxing districts pursuant to the Transaction and Use Tax Law (hereafter “District Tax”). (Rev. & Tax. Code § 7251 et seq.)

There are some exemptions to the District Tax. A district’s tax does not apply where a retailer, pursuant to a contract of sale, ships property from a location inside the district to a location outside that district. (Rev. & Tax. Code §§ 7261, 7262.) This is explained in Regulation 1823(a)(2) which provides that a district’s 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.”

This means that when your company is contractually required to ship property by common carrier from Alameda to a district with no District Tax, the proper tax rate is 7.25 percent. However, if your company ships to a location with its own District Tax, that District Tax applies to the purchaser's use of that property inside the district. (Rev. & Tax. Code § 7262.) Your company is obligated to collect that tax from the purchaser only if it is "engaged in business" in the purchaser's district, as defined in Regulation 1827. Regulation 1827(b)(1) and (c) generally 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.

We assume from your letter that your company has only one place of business inside this state. This means that your company's over-the-counter sales occurring at that location are subject to tax at the applicable tax rate for Alameda county. The tax rate for Alameda includes a .50 percent District Tax for BART (Bay Area Rapid Transit) and a .50 percent District Tax for ACTA (Alameda County Transportation Authority) for a total tax of 8.25 percent. We also assume from your letter that your company is not engaged in business in any other districts inside this state within the meaning of Regulation 1827. (If this assumption is incorrect, our opinion below would be different.) This means that your company is not required to collect any District Tax on its charges for teflon coating when the finished product is shipped to any district not imposing a BART or ACTA District Tax. Since Contra Costa and San Francisco counties impose a BART District Tax, your company must report tax at the rate of 7.75 percent (7.25 combined state/local tax rate plus a .50 BART District Tax) when making sales of property shipped to these counties. The purchasers of your coating in Contra Costa and San Francisco counties remain liable for the other District Taxes imposed in their locations. Your company must report tax at the rate of 7.25 percent when making sales of property shipped (pursuant to contract) to any location outside Contra Costa, San Francisco, or Alameda counties. In those situations, the purchasers of your products remain liable for any District Tax imposed in their respective locations.

We hope this answers your questions. If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Senior Tax Counsel

WLA/cmm

cc: --- District Administrator (--)