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November 10, 1994

Dear X-----,

This is in response to your letter received by us on August 26, 1994 in which you ask how sales and use tax apply to your business of photography sales on board cruise ships.

Your company, X-----, currently operates aboard a cruise ship that makes daily trips from San Diego, California to Ensenada, Mexico. During these trips, you take photographs of passengers, and later develop, print, display, and sell the photos from your retail store on the ship. You also sell items such as cameras, film, frames, and batteries from your store.

You indicate in your letter that you have read a copy of our pamphlet entitled "Tax Tips for Photographers, Photo Finishers, & Film Processing Laboratories." Therefore, I assume you understand that as a photographer, you will be regarded as the consumer or certain items, meaning that you may not purchase such items for resale, and you will be regarded as purchasing certain other items for resale, meaning that the sales to you are nontaxable. Regulation 1528, a copy of which is enclosed, explains which items you are regarded as purchasing for use, or consuming, and which items you can purchase for resale. Thus, as relevant to this opinion, there are two categories of property you purchase: property you purchase for use, and property you purchase for resale.

You ask about tax liability in several situations, each of which is quoted below and followed by our response.

"1) Photo related items, i.e. cameras, film, frames, and batteries. a) Do I need to pay sales tax on these items when I purchase them in the state of California, for resale aboard the ship? b) Must I collect sales tax aboard the ship for these items?"

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) When sales tax does not apply, use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401.)

Since sales for resale are not retail sales, the sale to you of cameras, film, frames, and batteries which you will resell without prior use is not subject to sales tax. As long as you resell that property without using it first, use tax will not apply. However, you owe sales tax on your retail sales of those items inside California, for which you may collect reimbursement from the purchasers if your contract of sale so provides.

When your sales to passengers occur outside the 3-mile limit, the sales do not occur in California and sales tax does not apply. (Reg. 1620(a).) However, use tax, measured by the sale price to the passengers, applies to the use of property purchased from you for use in California. (Rev. & Tax. Code § 6201.) When a retailer delivers tangible personal property outside of California to a purchaser known by the retailer to be a resident of this state, it is presumed that the property was purchased from that retailer for storage, use, or other consumption in California, and that it was stored, used, or otherwise consumed in this state. (Rev. & Tax. Code § 6247.) This presumption may be controverted by a statement in writing, signed by the purchaser or his or her authorized representative, and retained by the vendor, that the property was purchased for use at a designated point or points outside this state. This presumption may also be controverted by other evidence satisfactory to the Board that the property was not purchased for storage, use, or other consumption in this state.

Although the purchaser owes the use tax, a retailer engaged in business in this state is required to collect the tax from the purchaser and pay it to this state. (Rev. & Tax. Code § 6203.) Even when a retailer engaged in business in California makes a sale of property to a known California resident for use in California, the retailer is not always required to collect the use tax (of course, it may always do so voluntarily). When all activities related to the sale occur outside California, such as a purchase over the counter at the retailer's store outside California, the retailer would not be required to collect the use tax. (See Montgomery Ward & Co. v. State Board of Equalization (1969) 272 Cal.App.2d 728, 765.) However, your store, on board the ship, comes into California every day and picks up the passengers. They make purchases from you, then you deliver them, with their purchases, back into California. This is sufficient contact between the state and your sales to support the requirement that you collect the applicable use tax. Thus, as a retailer engaged in business in this state, you are required to collect use tax from the purchasers you know to be California residents and pay it to this state, unless you in good faith accept a written statement signed by the purchaser or his or her authorized representative that the property was purchased for use at a designated point or points outside this state. If you do accept such a statement in good faith, the purchaser will still owe the use tax if purchasing the property for use in California, but you will not be required to collect that tax. Under the circumstances of your transactions where passengers board the cruise ship in California and disembark from the ship in California, we believe that you should regard your customers as California residents unless they establish otherwise.

"2) Do I pay sales or use tax on film, purchased in California, used for the purpose of photographing boarding and deck photos?"

Tax applies to sales to photographers of materials used in the process of making the photographs and not becoming an ingredient or component part thereof, such as chemicals, trays, films, plates, proof paper and cameras. (Reg. 1528 (a) (1) .)

When a retailer sells film to you inside California, that retailer owes the sales tax, but may collect reimbursement from you if the contract of sale provides for such reimbursement. You may not purchase such property extax by issuing your vendor a resale certificate.

"3) Do I pay sales or use tax on paper and chemicals, purchased in California, for the use of developing and printing boarding, deck, and one hour lab photos?"

The answer to this question is the same as the answer to question 2.

"4) Do I pay sales or use tax on photo equipment, purchased in New York, for use aboard the ship?"

I assume for purposes of this opinion that your use of the term "photo equipment" refers to items you use and do not resell. Since you are purchasing the property outside California, sales tax does not apply. (Reg. 1620(a).) However, if you purchase the property for use in California, use tax applies to your use in this state.

Property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property (use for which the property is designed) is in California. (Reg. 1620(b) (3).) When the property is first functionally used outside of California, it will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. (Id.)

With respect to photo equipment you purchase in New York and first functionally use in California, you owe use tax measured by the sale price of the photo equipment. If the photo' equipment is first functionally used outside of California and brought into California within 90 days of purchase, and if the photo equipment was not used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state, it is presumed that you purchased it for use in California. You owe use tax on your California use of such property measured by the sale price to you. If photo equipment not first functionally used in California was brought into California within 90 days of purchase but was used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state, the equipment will not be regarded as having been purchased for use in this state, and you will not owe California use tax on your use of such property.

"5) Do I pay sales or use tax on photo equipment, i.e. film processor, printer processor, purchased in Arizona, for use aboard the ship?"

The answer to this question is the same as the answer to question 4.

"6) Do I pay sales or use tax on photo equipment, purchased In California, for use aboard the ship?"

The answer to this question is the same as the answer to question 2.

Certain items you purchase, such as film, are sometimes purchased for use, and at other times are purchased for resale. As discussed above, when you purchase such items inside California for your own use, the retailer owes the sales tax, and you may not purchase the property extax by issuing that vendor a resale certificate. When you purchase such items outside California for use in California, you owe use tax measured by the total sale price of the property to you.

When you purchase the property for resale, you may issue your vendor a resale certificate. When you thereafter sell the property to your customers inside California, you owe the sales tax, measured by your gross receipts. When you sell the property to the passengers outside of California, the sales tax does not apply but you may be required to collect use tax, as discussed above.

You ask on which forms and at which lines you should report amounts subject to sales or use tax. On your "State, Local & District Sales & Use Tax Return, " report your total gross sales on line 1, and report your own purchases subject to use tax on line 2. If you have any further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

Cc: San Diego District Administrator