



STATE BOARD OF EQUALIZATION

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June 18, 1997

Mr. J--- W. B---
M--- & B---
XXX --- Street
Post Office Box XXX
---, Virginia XXXXX

Re: Internet Shopping

Dear Mr. B---:

This in response to your letter dated May 30, 1997 in which you ask about the use tax collection duties of your unidentified client ("Company") and its suppliers under the following circumstances:

"Anyone with a valid credit card and access to the World Wide Web may shop in Company's 'store' and purchase products. Many shoppers will undoubtedly be California residents. Others will not, but will purchase products (such as a gift) to be shipped to California residents.

"Company buys products for resale to its shoppers directly from either the manufacturer or a distributor. Certain of these manufacturers or distributors have facilities in, or otherwise have a nexus to, California. Others have no nexus to California whatsoever.

"The actual purchase transaction is initiated by the shopper in the following manner: (1) shopper views a product presentation in Company's Internet store and, with the aid of a mouse, 'clicks' a purchase icon if the shopper wishes to order the item; (2) the electronic message notifies the manufacturer by EDI of the sale; (3) an electronic purchase order from Company to the manufacturer is generated which indicates, among other terms, that the item is purchased FOB manufacturer's dock; (4) a shipping label is printed out at the manufacturer's distribution center from which the item will be shipped; (5) the label is then placed on the shipping carton by the manufacturer's warehouseman; (6) a common carrier such as UPS then picks up the carton at the shipping dock, scans in certain bar coded information on the label thereby creating an electronic

bill of lading; (7) the item is then shipped to the shopper; (8) the shopper's credit card is debited by Company; (9) the manufacturer invoices Company for the cost of the goods; and (10) Company wire transfers payment to the manufacturer's bank. With the exception of the shipping label, the entire transaction is paperless.

"This electronic transaction is the same whether Company purchases the item for resale from a distributor or directly from the manufacturer. Additionally, Company pays the shipping charges, not the manufacturer or the distributor.

"The Company's office is in ---, Virginia. It has no office, warehouse, or other facility of any kind in California (or any other state). Company does not own or lease any real estate in California. All of Company's employees live in Virginia. Company has no sales representatives, independent or otherwise, in California. All banking and other outside administrative tasks are performed in Virginia. Company is not part of any trade group or similar group with a presence in California. All of Company's computer equipment, including the servers which constitutes its Internet store, are in its office in Virginia. Company has no California State licenses or permits of any kind. Company pays Virginia, not California, income taxes. Company is not incorporated in California.

"Please consider the two scenarios below with the above facts in mind.

"Scenario 1.

"X is an out of state manufacturer/distributor. X has a distribution center in California (as well as other states) or there are other facts which constitute a nexus between X and California. Company sends an electronic purchase order from Virginia to X to purchase products from X for resale, FOB X's distribution center outside California, to be shipped to a California addressee. Company pays the shipping charges.

"Scenario 2.

"Y is an out of state manufacturer/distributor with no distribution center in California. No other facts exist which constitute a nexus between Y and California. Company sends an electronic purchase order from Virginia to Y to purchase products from Y for resale, FOB Y's distribution center outside California, to be shipped to a California addressee. Company pays the shipping charges."

Initially, I note that you ask for an opinion pursuant to Revenue and Taxation Code section 6596. That provision states that the Board may relieve a person of tax liability if the failure to pay the tax was based on the reasonable reliance on written advice from the Board

in response to a written request for advice that includes all relevant information, including the identity of the parties to the transactions. Since none of the parties about whom you inquire are identified, this letter does not come within the provisions of section 6596.

You ask whether Company, X, or Y have any obligation to collect and pay California sales tax in either scenario. Since these sales will occur outside California, California sales tax will not apply. (Rev. & Tax. Code § 6051, Cal.U.C.C. § 2401.) Rather, the applicable tax is use tax. (Rev. & Tax. Code § 6201.) The person who owes the use tax is the purchaser, and his or her liability is not extinguished until the person pays the use tax to the Board or pays the use tax to a retailer registered for collection of use tax with the Board. (Rev. & Tax. Code § 6202.) Thus, even if neither Company nor its supplier is required to collect the use tax, the transaction remains taxable and the purchaser remains liable for that tax until it is paid to the Board.

California's nexus provision, Revenue and Taxation Code section 6203, imposes a use tax collection duty on any retailer who is "engaged in business" in California. If a person does not come within the provisions of section 6203, California cannot require it to collect this state's use tax from that retailer's California purchasers (a retailer may, of course, voluntarily register to collect California's use tax). Based on the information in your letter, it appears that Company would not be regarded as a retailer engaged in business in California under section 6203. Thus, assuming it does not voluntarily register with California for collection of use tax, it will not be required to collect use tax from its California customers under either scenario.

You state that X has nexus with California. I assume that is engaged in business in California within the meaning of section 6203. As such, it must collect use tax on its retail sales and remit such tax to this state. Under the facts in your letter, the second paragraph of Revenue and Taxation Code section 6007 applies:

"When tangible personal property is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner or factor to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price."

In commercial terms, X is making a sale for resale to Company, for retail sale to Company's customers. However, Company is not engaged in business in California and X will be "drop shipping" the purchased property directly to the California customers pursuant to retail sales made by Company. As such, X will be deemed the retailer of the property under the provision quoted above. It must therefore report and pay use measured by the price paid by the California consumer.

You state that Y has no nexus in California. If this is true and Y is not engaged in any activity in California bringing it within the provisions of section 6203, then Y would not be required to collect use tax from the California consumers to whom it delivered property by common carrier pursuant to retail sales made by Company. If, however, Y were engaged in an activity in California bringing it within section 6203, then it would be regarded as the retailer under the second paragraph of section 6007 and would be required to collect use tax as discussed in the previous paragraph.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Supervising Tax Counsel

DHL/cmm

cc: Out-of-State District Administrator (OH)