

**STATE BOARD OF EQUALIZATION**

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August 18, 1999

E. L. SORENSEN, JR.
 Executive Director

Mr. Begin deleted text REDACTED TEXT End deleted
 text
 Sacramento, CA 95814

Re: Begin deleted text REDACTED TEXT End deleted text

Begin deleted text REDACTED TEXT End deleted text
 Account No. Begin deleted text REDACTED TEXT End deleted text
 Begin deleted text REDACTED TEXT End deleted text (Tobacco
 Taxes)

Dear Mr. Begin deleted text REDACTED TEXT End deleted text:

I am responding to your letter dated June 28, 1999, to Assistant Chief Counsel Gary J. Jugum requesting a ruling on behalf of Begin deleted text REDACTED TEXT End deleted text regarding various aspects of the Bradley-Burns Uniform Sales and Use Tax Law, Transactions and Use Tax Law, the Alcoholic Beverage Tax Law, and various laws affecting sales of tobacco products as they affect your client's operations. We note that the Board staff cannot issue tax rulings; only the Board itself may do that. We can, however, give you our opinion regarding the correct application of tax to a given set of facts.

As you describe Begin deleted text REDACTED TEXT End deleted text, it is an on-line grocery seller. Its corporate offices are in Foster City, the computer server on which Begin deleted text REDACTED TEXT End deleted text website is located (and which it owns) is in Sunnyvale, and their warehouse from which orders are shipped is located in Oakland. The customer places an order on Begin deleted text REDACTED TEXT End deleted text site which is transmitted electronically to Begin deleted text REDACTED TEXT End deleted text warehouse in Oakland. The order is processed there, and the goods are placed on a truck leased by Begin deleted text REDACTED TEXT End deleted text which is then driven by a Begin deleted text REDACTED TEXT End deleted text employee to an intermediate station and there placed on another delivery van also leased by Begin deleted text REDACTED TEXT End deleted text and driven by a Begin deleted text REDACTED TEXT End deleted text employee to the ultimate place of delivery. From these facts, we conclude that even though Begin deleted text REDACTED TEXT End deleted text owns the server on which its website resides, no processing of the order occurs at that location, but only at the warehouse.

OPINIONA. Local and District Taxes1. Generally

In California, there is a statewide tax rate of 7.25%. This rate is made up from the California Sales and Use Tax (6% -- §§ 6051 et. seq. & 6201 et. seq.) and the Bradley-Burns Uniform Local Sales and Use Tax (§§ 7200-7212). (Unless otherwise stated, all statutory citations are to the Revenue and Taxation Code.) Under the latter, the counties of California impose a 1¼% percent tax on all sales within their boundaries. Each city within a county also imposes a local sales tax at rates up to 1% percent. This tax is offset against the county tax so that the rate within each county is a uniform 1¼%.

In 1969, the Legislature enacted the Transactions and Use (“District”) Tax Law. (§ 7251 et. seq.) Under enabling statutes in various codes, local jurisdictions may impose transactions (sales) and use taxes at rates of specified percentages of the gross receipts from the sales within the jurisdiction of tangible personal property sold at retail or of the sales price of property whose use, storage, or consumption within the jurisdiction is otherwise subject to tax. (§§ 7261(a) & 7262(a).) Although counties and a few cities may impose such taxes, for the sake of convenience, we refer to all entities imposing such taxes as “districts.” No matter where the enabling authority is found, all district taxes are administered by the Board under the District Tax Law.

2. “Out-of-District” Exemption

There are some exemptions from the District Tax. Sections 7261 and 7262 require that each district imposing a tax must include in its authorizing ordinance certain uniform provisions. One of these required provisions exempts from the transactions tax imposed on retailers, but not the use tax imposed on purchasers, sales of property to be used outside the district where the retailer ships to a point outside its district pursuant to its contract of sale with the purchaser. (§ 7261(f).) In interpreting and applying this exemption, Title 18, California Code of Regulations, Regulation 1823(a)(2), provides that the transactions 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.”

(Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.)

3. Retailer's Duty to Collect.

Whether a retailer not located in a district (or located in a different district than the purchaser) is obligated to collect from the purchaser district use tax depends upon whether the retailer is “engaged in business” in the purchaser's district, as defined in Regulation 1827. In summary, Regulation 1827(b)(1) and (c) 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.

4. Tax Consequences.

Local sales tax revenue is allocated to the place where the customer comes to negotiate the sale, not where the property goes. (§ 7205.) In the situation where the retailer has only one place of business in California that participates in the sale, the money goes to that place. (Reg. 1802(a)(1).)

The facts show that Begin deleted text REDACTED TEXT End deleted text has no sales office in this state (or anywhere else), but that the goods it sells are shipped from a California warehouse. Since the property is within this state (§§ 6010.5 & 6017) at the time the act constituting the sales takes place (shipment--Cal. U. Comm. Code § 2501(2)), such sales are California retail sales subject to state and local sales tax. The local sales tax revenue must thus be allocated to a place of business of some kind of the retailer under the regulation. But is the “place of business” the website or the warehouse?

We have previously concluded that a website is not a place of business, being merely an electronic file with which the retailer may or may not be involved. Instead, the place of business in this situation must be the location of the retailer's employees who receive the order which was placed on the website. (Annot. 710.0013.600 (12/30/97).) The facts you give show that Begin deleted text REDACTED TEXT End deleted text employees first become involved with the order when it is processed in Oakland. For that reason, we conclude that the place of sale of Begin deleted text REDACTED TEXT End deleted text sales for the purposes of local and district taxes is Oakland. (Regs. 1802(a)(1) & 1822(a)(1).)

Regarding district taxes, the situation is reversed-- the tax follows the property. That is, wherever the property goes, that is the tax rate to be applied. Under the above authority, in over-the-counter sales, the district tax rate is that in effect (if any) at the place of sale, but if the property is shipped outside that district, then the proper tax rate is that in effect at the place of use. Normally, the place of use is presumed to be the purchaser's residence or place of business, but if the delivery point is a different location, the use is presumed to take place where the property is delivered. (Annot. 800.004 (6/6/89).) If the seller makes regular deliveries into a district, it is engaged in business in that district and so must collect the district use tax in effect there. (Reg. 1827(c)(2); Annot. 800.0900 (5/18/93).)

Here, the place of sale is in Oakland, which is located within the Bay Area Rapid Transit District (BART) and the Alameda County Transportation Authority (ACTA) for a total district tax rate of 1%. You indicate that Webvan delivers its goods into the counties of Marin (no district), San Francisco (three--1.25%), San Mateo (two--1%), Contra Costa (two--1%), and Santa Clara (two, for 1%) in addition to Alameda County. For sales delivered into Marin County, Webvan is liable for only the statewide sales tax rate of 7.25%. For sales delivered in Alameda County, including over-the-counter sales, Webvan must report and pay the statewide sales tax rate of 7.25% plus the BART and ACTA district transactions taxes for a total tax rate of 8.25%. For sales in which the goods are delivered into the other counties you listed, Webvan must pay the statewide sales tax rate of 7.25% and report and collect the use taxes of the districts (if any) in effect in the counties into which Webvan delivers its goods at the time of delivery.

You asked about the documentation required in the event of an audit. You should contact Ms. Barbara Lee, San Francisco District Principal Auditor, 455 Golden Gate Avenue, Suite 7500, San Francisco, California 94102-3625 (415) 703-5328, to discuss the documentation needed.

B. Cigarette Taxes.

With respect to tax on cigarettes, based on the description of the activity set forth in your letter, we concur with your assertion that no further tobacco tax collection or reporting requirement exists with regard to cigarettes, because Begin deleted text REDACTED TEXT End deleted text will have purchased from a licensed California wholesaler cigarettes with stamps affixed. Likewise, we concur that the approach taken by Begin deleted text REDACTED TEXT End deleted text in paying tax on its wholesale cost of cigars acquired from an out-of-state vendor and filing appropriate returns and remitting tax is proper. In response to your question as to what documentation is routinely required to be retained to substantiate the proper payment of tobacco taxes, there is no particular list of records required to be retained. As with the previous section, you should contact Ms. Lee for a discussion of the required documentation.

C. Alcoholic Beverage Tax.

With respect to tax on wine, beer and spirits that Begin deleted text REDACTED TEXT End deleted text sells through its website, based on the description of the activity set forth in your letter, we concur that since, under the facts as you recite them, Begin deleted text REDACTED TEXT End deleted text purchases all of these products from licensed distributors who have previously accrued and paid the Alcoholic Beverage Tax on the products, Begin deleted text REDACTED TEXT End deleted text has no obligation for additional collection and reporting of Alcoholic Beverage Tax.

For your ease of reference I have enclosed copies of Board of Equalization Pamphlets 28, "City and County Officials;" 44, "District Taxes;" and 71, "California City and County Sales and Use Tax Rates." I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Mr. M

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August 18, 1999
710.0150

Sincerely,

John L. Waid
Senior Tax Counsel

JLW:sr

Enclosures: Pamphlet Nos. 28, 44 & 71

cc: Ms. Barbara Lee--BH District Administrator
Ms. Sharon Jarvis
Ms. Judy Nelson

bc: Mr. Larry Micheli (MIC:27)
Mr. Robert Wils (MIC:39)

-- This is the same company which was the subject of my memo to Bob dated 12/30/97 which is the backup to Annotation 710.0013.600 (12/30/97). There, we were responding to a letter from MRC which stated how the taxpayer intended to set up its business. It said that the website and the warehouse would both be in Hayward. Here it is said that the website is in Sunnyvale, and the warehouse is in Oakland. As I recall, MRC did not say who would own the server, but here the taxpayer owns the server. It might be a good idea to review the coding on this to make sure where the warehouse is.