

**STATE BOARD OF EQUALIZATION**

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June 6, 1989

Mr. R--- L. T---
Law Offices of
G--- and T---, Inc.
XXX --- Drive
---, CA XXXXX

J--- T--- F--- Co. –
SR -- XX-XXXXXX and SR -- XX-XXXXXX
District taxes – deliveries out of district and
use in district

Dear Mr. T---:

In your April 3, 1989 letter to the Board's legal staff, you write that your firm represents J--- T--- F--- Co., which has its principal place of business in Sacramento County. Your client has asked you to determine the extent to which it should collect the ½ percent sales tax as provided by Measure A of Sacramento County. I have quoted below the questions you have asked, followed by our responses:

Question:

“1. We have been advised by Mary Ann Fiorino of your office at Alhambra and S Streets, Sacramento, California that sales which our client makes from its principal office in Sacramento County to farmers in other counties where the delivery is made to that farmer in the other county, are not subject to the one-half percent sales tax. Can you verify this?”

Answer. Under the Transactions and Use Tax Law, Revenue and Taxation Code Sections 7251 et seq., the district transactions (sales) and use taxes are imposed in countywide special taxing districts in California. As you are aware, the Sacramento County Transportation Authority imposed its ½ percent transactions and use tax ordinance beginning April 1, 1989. Revenue and Taxation Code Sections 7261 and 7262 require that each district imposing a local

ordinance must include in its 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 which the retailer ships to a point outside the district pursuant to a contract of sale between the retailer and the purchaser. (Section 7261(a)(6)). In interpreting and applying this exemption, the Board's Regulation 1823(a)(2)(B) provides that the transactions tax does not apply to 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 such in a district imposing transactions (sales) and use taxes, the use tax may apply.

The above authorities confirm that Ms. Fiorino's advice to you is correct. The transactions tax imposed on retailers' sales in Sacramento County will not apply where your client delivers the property sold to its customers outside of Sacramento County. Of course, if the purchaser takes possession of the property in Sacramento County the district transactions tax will apply, even though the purchaser will immediately remove the property sold outside the district. Also, as noted below, the district use tax imposed in Sacramento County may apply to the purchaser's use of the property in the county, notwithstanding that the property was first delivered to the purchaser outside of the county.

Question:

"2. In the event our client makes a sale to a customer who has an out of county office and our client makes delivery outside of Sacramento County, but then that customer takes the product and applies it on a field in Sacramento County, is this sale subject to the one-half percent sales tax even though the delivery was made outside of Sacramento County by our client?"

"3. Fertilizer and chemical sales are sometimes made to customers who have out of county addresses and have farms in several counties including Sacramento County. The delivery of the product may be made to a out of county Aerial applicator such as a crop duster in Sutter County. Our client would not know whether the product is going to be applied in Sutter County or Sacramento County. How should this type of situation be handled?"

Answer. Under Section 7262, the districts are also required to include in their ordinances certain uniform provisions related to the district use tax. The use tax is imposed at the same rate as the transactions tax, upon persons who store, use, or consume tangible personal property in a district. Regulation 1823(b)(1) interprets and applies the district use tax provision as follows:

“(b) USE TAX

“(1) IN GENERAL. State-administered district use tax applies if tangible personal property is purchased from a retailer on or after the operative date of the district taxing ordinance and the property is purchased for use in the district and is actually used there, provided any one of the following conditions exist:

“(A) ...

“(B) ...

“(C) The place of sale is in a district having state administered transactions (sales) and use taxes and there is an exemption of the sale of the property from the transactions (sales) tax but there is no exemption of the use of the property from the use tax; ...”

If a purchaser purchases tangible property from a retailer for storage, use, or consumption of that property within a district, the purchaser is liable for that district's use tax, and is entitled to credit against that use tax obligation for tax reimbursement (if any) paid to a retailer for district transactions tax. (Regulation 1823(b)). A retailer whose place of business is located in the same district in which the purchaser purchased the property for use, is engaged in business in that district under Regulation 1827(c), and is obligated to collect the district use tax from the purchaser and pay it to the Board, when the retailer participates in the sale in the district. (Regulation 1827(b)). If the purchaser is a resident of the district, there is a presumption that property delivered outside the district is nevertheless purchased for use in the district and a retailer engaged in business in the district must collect the use tax unless he obtains from the purchaser a statement in writing that the property was purchased for use outside the district. (Regulation 1827(b)(2)).

Under the facts you relate, and assuming that the purchaser is not a resident of Sacramento County, our opinion is that your client is not liable for the transactions tax when the property sold is delivered to the purchaser outside of Sacramento County. But your client is liable for the collection of the use tax imposed on the purchaser for his use of the property in Sacramento, if at the time of purchase the purchaser intended to use the property in Sacramento County. However, if at the time of purchase the customer did not know where he was going to use the property, and only at a later time used the property purchased in Sacramento County, then your client would not be required to collect the use tax on the transaction, since at the time of sale the property was not purchased for use in Sacramento County. The purchaser would become liable for the use tax only when he did, in fact, use the property in Sacramento County, but your client would not have an obligation to collect the tax at that time.

Mr. R--- L. T---

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June 6, 1989
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I enclose Regulations 1823 and 1827 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Senior Tax Counsel

JA:jb
Enclosures