



STATE BOARD OF EQUALIZATION

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October 8, 1992

BURTON W. OLIVER
Executive Director

Mr. E--- H. B---
A--- I--- P--- Company
XXX --- --- Street
---, California XXXXX

Re: SR -- XX-XXXXXX
Retailer's Duty to Collect Use Tax
on Out-of-District Sales

Dear Mr. B---:

I am responding to your letters to the Legal Division dated August 5 and September 15, 1992. You asked if we could approve or correct your understanding regarding your obligations to remit district transactions and use taxes.

You describe your business in your letter of August 5, 1992, as follows:

“My company [“A--- I---”] is located in Oakland and has no physical presence anywhere else. Business is done outside of Oakland by mail order only. Aside from an ad in the San Francisco telephone book there is no soliciting outside of Oakland.

“It is my understanding that I am required to collect only two categories of sale tax, and that these are: (1) Alameda, which consists of San Francisco, Alameda, and Contra Costa; and (2) California, which consists of everywhere else in California.

“I further understand that I am to collect 8.25 percent of sales for Alameda. This includes San Francisco from which no district tax will be collected. The percentage of sales which will be collected for California is to be 7.25 percent.”

In your second letter, you elaborate upon your operations as follows:

“My company is located only in Oakland. I have neither office, nor warehouse, nor sales force, nor any other physical presence outside of Oakland. I do, however, have a listing in the San Francisco telephone directory.”

You do not indicate how you deliver the goods you sell- whether in your own trucks or by common carrier.

OPINION

A. Transactions and Use Tax

1. Generally

In California, there is a statewide tax rate of 7.25%. This rate is made up from the California Sales and Use Tax (§§ 6051 et. seq. & 6201 et. seq.) and the Bradley-Burns Uniform Local Sales and Use Tax (§§ 7200-7212). In 1969, the Legislature enacted the Transactions and Use Tax Law. (§ 7251 et. seq., hereinafter “District Tax”.) Pursuant to various enabling statutes, local jurisdictions are permitted to impose transactions (sales) and use taxes at rates of 0.25% or 0.5% 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 with the jurisdiction is otherwise subject to tax. (§§ 7261(a) & 7262(a). Although counties and a city may impose such taxes as well as special districts, we will, for the sake of convenience, refer to all jurisdictions imposing such taxes as “districts.”)

2. “Out-of-Jurisdiction” 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. (§ 7262(a)(6).) In interpreting and applying this exemption, Title 18, California Code of Regulations, Regulation (“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 into the district, or participates in the district in making the sale.

B. Tax Consequences to A--- I---

Alameda County has two county-wide taxing districts: Bay Area Rapid Transit District (BART) and Alameda County Transportation Authority (ACTA). Each imposes a transactions and use tax of 0.5% for a combined district tax rate of 1%. The total tax rate in Alameda County is, as you note, 8.25%. Most taxing districts encompass only one district, but BART takes in Alameda, Contra Costa, and San Francisco Counties.

Since your sole place of business is in Alameda County, the place of sale for A--- I---'s products is Alameda County. ("Reg." 1822(a)(1).) Your sales to Alameda County residents or to residents of other counties who pick up their purchases at your office are subject to BART and ACTA transactions (sales) taxes for a total tax rate of 8.25%.

Sales to residents of counties other than Alameda (assuming the contract of sale requires that the goods be shipped out of Alameda County) are generally exempt from the district taxes in effect in Alameda County. BART, is however, an anomaly because it is a multi-county district. Thus, A--- I---'s sales to residents of Contra Costa and San Francisco counties are also subject to the BART transactions tax. They are not subject to the ACTA transactions tax.

If the destination county has one or more countywide taxing districts, then the purchaser is liable for the district use tax(es) in effect in that county. The question is whether or not A--- I--- must collect that use tax from the purchaser. You indicated that A--- I--- has no place of business other than the Oakland office but did not indicate how it got its goods to its customers. Therefore, under the above authority, A--- I--- is considered under Regulation 1827(c) to be engaged in business in, and so must collect use tax for, only those county-wide taxing districts into which it makes regular deliveries of its goods in its own trucks. For example, assuming it delivers goods into Contra Costa County by means of its own trucks, A--- I--- must pay, and may collect reimbursement for, BART transactions tax, and also must collect Contra Costa

Transportation Authority (CCTA) use tax for a total tax rate of 8.25%. If it sends its goods in by common carrier only, it is not required to collect the CCTA use tax, but still must pay BART transactions tax for a total rate of 7.75%. If the county of destination has no taxing districts, then only the state-wide rate of 7.25% applies.

For your information, I have included a copy of Board of Equalization Pamphlet No. 44-A, "Questions and Answers on District Taxes," and Regulations 1822 and 1823. I hope the above discussion has answered your question. I apologize for the delay in responding. We have had a rash of hearings before the Board, both in and out of town, which has prevented me from working on anything else. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Enclosure: Pamphlet 44-A
Regs. 1822 & 1823