



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

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October 8, 1992

BURTON W. OLIVER
Executive Director

Mr. J---s D. P---
Vice President, Finance
E---
P.O. Box XXXX
---, Texas XXXXX

Re: SC -- XX-XXXXXX
Collection of District Use Tax

Dear Mr. P---:

I am responding to your letter dated August 12, 1992 to the Legal Division. You ask whether or not E--- is required to collect the district use taxes imposed under Revenue and Taxation Code Section 7251 et. seq. The file demonstrates that you are registered to collect state use tax. (Unless otherwise stated, all statutory citations are to the Revenue and Taxation Code.)

You indicate that E--- has only one office, located in [out of state], and all orders are taken and processed by your sales staff which is based there. 90% of E---'s orders are placed directly with E--- by the customers. Presumably, you mean 90% of the orders from California since you indicate that E--- has an independent third-party sales representative firm, D--- E---, Inc. ("D---"), located in ---, California, which handles about 10% of E---'s California sales.

You further indicate that all sales are FOB ---, Texas. From that fact, you reason that E-- - makes no shipments into any California transit district. We assume that E---'s shipments are by common carrier. You also ask for confirmation that E--- is required to collect State and Local Use Taxes.

OPINIONA. Transactions and Use Tax1. 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, for the sake of convenience, we refer to all jurisdictions imposing such taxes as “districts.”

2. Retailer’s Duty to Collect.

Whether a retailer not located in a district (or located out of state) 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 sum, sub-divisions (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 that 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 E---1. Collection of State-wide Use Tax.

You indicate that E---’s products are purchased by California residents and that E--- ships those purchases to California. Thus, as the goods are not in California when they are sold, the tax applying to the transaction is the use tax. (§§ 6010.5, 6017.) Under Section 6201 et. seq., E---’s customers in California are required to pay use tax on those purchases. As E--- has a sales representative in California, even though it is not an employee of E--- but an independent contractor, E--- has a duty - i.e., nexus - to collect state use tax from its California customers. (§ 6203.) The Local Tax is a component of the state-wide tax which the Board collects as part of the state-wide tax and distributes it to the cities and counties. E--- collects local use tax on the same basis as it collects state use tax.

2. Collection of District Use Tax.

Under Regulation 1827, discussed above, the nexus required to impose a duty on a retailer to collect district use tax is much narrower than that needed to require it to collect state use tax. The retailer must meet one of the three criteria set forth in the regulation.

You do not provide any information about D---'s operations on E---'s behalf. E--- does not have any employees in California, but, as D--- is E---'s sales representative, E--- is considered to be "engaged in business" in any district in which D---'s salesmen make sales. (Reg. 1827(c)(2).) ---, where DJM is located, is in Los Angeles County, which has two county-wide taxing districts for a total combined tax rate of 8.25%. E--- must thus collect district use tax on any sales it makes to customers residing in Los Angeles County.

Unfortunately, there is not enough information to give you a definitive opinion regarding E---'s duty to collect district use tax in districts outside of Los Angeles County. If D---'s salesmen travel to other counties which have county-wide taxing districts, then E--- must collect district use tax on purchases it ships there. (Reg. 1827(b)(1).) If they do not actually go into other districts to contact customers but make contacts from the --- office, then E--- is not considered to be "engaged in business" in those districts under Regulation 1827 and need not collect district use tax on those sales.

For your information, I have included a copy of Board of Equalization Pamphlet No. 44, "District Taxes." I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Enclosure: Pamphlet No. 44