


STATE BOARD OF EQUALIZATION

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Executive Director

January 26, 1995

Ms. E--- S. T---
 P--- E--- & P---, Inc.
 XXXX --- --- Parkway
 --- --- ---, CA XXXXX

RE: SR -- XX-XXXXXX
 District Tax of
 Place of Use

Dear Ms. T---:

I am responding to your letter to the Legal Division dated December 1, 1994. You indicated that you are invoicing a California state agency for equipment. The agency has issued you a purchase order with a "ship to" address different from that of the actual jobsite. The jobsite is in a county with a higher total sales tax rate than that of the shipping address. You believe that the purchasing agent is deliberately having the equipment shipped to an address different from that of the jobsite to avoid paying the higher tax rate. You also indicate that you called one of our district offices for advice and were told to use the tax rate in effect at the shipping address because you did not know where the equipment was going to end up. When you explained that you did know where it was going, our representative again said to use the shipping address tax rate and to write to the Legal Division. From your use of the word "jobsite" we assume that you are selling this equipment pursuant to a construction contract.

OPINION

While we have assumed that you are selling this equipment pursuant to a construction contract, you do not indicate whether you are responsible for installing it at the site. Therefore, either one of two rules could apply to your situation, both applying the tax rate in effect at the jobsite. If you are not responsible under the contract to install the property at the jobsite, then you are a materials supplier merely selling the property at retail. As you know, when tangible personal property is sold for use outside the district in which the seller is located and the seller ships the property outside the district pursuant to the contract of sale, the transactions tax of the seller's district does not apply to the transaction.

Where the goods are shipped to one address for ultimate use at other addresses, but at the time of purchase the seller does not know or have reason to know that the goods are already marked for use at another address, then the seller is entitled to deem the shipping address as the place of use and report district tax accordingly. However, where the goods are sold for use at one place but shipped to another, we have previously determined that the retailer must report tax based on the ultimate place of use of the property. Here, you know that the equipment is going to be used at a jobsite located in a taxing district different from the one in which the shipping address is found. Under the above authority, then, you must report and collect the district use tax in effect at the jobsite (again assuming you are engaged in business in that district).

If you are responsible for installing the property, then you are considered a construction contractor for sales and use tax purposes. Under Regulation 1826(b)(1), the jobsite is the place of business of a construction contractor and the place of sale of fixtures, and the place of use of materials. Therefore, no matter where you ship the goods initially, the transactions tax in effect at the jobsite applies, and you must report tax accordingly.

In sum, the applicable tax is either the transactions or the use tax in effect where the jobsite is located, depending on whether or not you are considered a construction contractor. You must report and either pay transactions tax or collect use tax at the rate in effect there.

For your information, I have included copies of our Board of Equalization Pamphlet Number 44, "District Taxes," and Regulations 1823, 1826, and 1827. I hope the above discussion has answered your questions. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:sr

Encs.: Pamphlet No. 44

Regs. 1823, 1826 & 1827

cc: Sacramento District Administrator