

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6493

June 16, 1989

Mr. L--- R---
Partner
The F---
XXXXX --- Boulevard
--- ---, CA XXXXX

The F--- – SR -- XX XXXXXX
District transactions and use taxes – registration
of undocumented vessels

Dear Mr. R---:

In your April 5, 1989 letter to the Board's legal staff, you write:

“I would like to have written clarification of several aspects of the newly instated ½% Sacramento County Transportation Authority tax as it pertains to transactions with The F---.

“The F--- is a retail business in --- ---. We sell sailboats and related marine hardware.”

I have quoted below the questions you have raised, followed by our responses.

Question

“(1) We understand that the tax rate on an undocumented vessel is determined by the ‘registration address’. However, on the Department of Motor Vehicles Application for Registration of an Undocumented Vessel there are requests for two addresses (a) the address of the registered owner and (b) the address where the vessel is kept. Which address is the ‘registration address’ to be used to determine the tax rate?”

Answer. Before answering your specific question, we feel it is worthwhile to outline some of the basic rules which apply under the Transactions and Use Tax Law, Revenue and Taxation Code Section 7251 et seq., especially the difference between the district transactions

(sales) tax imposed on retailers and the district use tax imposed on purchasers. The district transactions (sales) taxes are imposed by countywide special taxing districts in California on retailers making sales at the retailer's place of business in those counties. The district transactions tax will apply to a retailer's sales even if the purchaser immediately removes the property purchased from the district. However, if a retailer located in a district ships or delivers the property sold to the purchaser outside of the district, pursuant to a contract of sale with the purchaser, that sale is exempt from the district transactions tax. (Regulation 1823(a)).

If a purchaser purchases tangible personal property from a retailer for storage, use, or other consumption of that property within a district which imposes a transactions and use tax, the purchaser is liable for the district use tax, and is entitled to a credit against that use tax obligation for tax reimbursement (if any) which he paid to the retailer for district transactions tax. (Regulation 1823(b)). A retailer who has (among other things) a place of business in the purchaser's district will be obligated to collect that district's use tax from the purchaser if the retailer ships the property sold into that district, or participates in that district in making the sale, since the retailer is "engaged in business" in the purchaser's district as defined in Regulation 1827(c).

The rules stated above with regard to out-of-district shipments and the definition of "engaged in business" are modified in the case of vehicles, aircraft, and undocumented vessels required to be registered with the Department of Motor Vehicles (but not documented vessels required to be registered with the Coast Guard). With respect to the transactions tax imposed on retailers, if a retailer is located in a district, but the purchaser will register the vessel at an address outside of the district, the retailer may delivery the property sold to the purchaser in the district, rather than outside of the district, and the sale will nevertheless qualify as a out-of-district shipment exempt from transactions tax, but only if the purchaser executes a declaration in the form set out in Regulation 1823.5, certifying that the vessel will be registered to an address located outside of that district. That registration address is the purchaser's residence or place of business, and the place where the vessel will be docked or moored. (See line 3 of Regulation 1823.5 vessel declaration form).

Also, if the retailer is located outside the district, and the purchaser will register the vessel to a residence or business address inside the district, then the retailer is "engaged in business" in that district and must collect the use tax imposed by that district, regardless of whether or not the retailer has a place of business in that district or representatives or agents operating in that district. (Regulation 1827(c)(4)).

With this background in mind, our opinion with respect to the first question you have raised is that if you deliver an undocumented vessel at your place of business to a purchaser who registers the vessel to a Sacramento County address, but will moor the vessel at an out-of-county marina, Sacramento County's district transactions tax will apply to your sale of the vessel. This is because you neither delivered the property sold to a location outside of the district, nor delivered it in the district to a purchaser whose registration address was outside of the district. It would not matter that the purchaser will immediately remove the vessel to the out-of-county marina.

If the purchaser's registration address is outside of any district, and the place where the vessel will be moored is also outside of any district, then your delivery of the vessel to the purchaser in Sacramento County will be exempt from the district transactions tax, but only if you obtain from the purchaser the Regulation 1823.5 declaration.

If you deliver the vessel to the purchaser at an out-of-district marina, where the vessel will be moored, then the district transactions tax will not apply to your sale, regardless of the purchaser's registration address. If the purchaser's registration address is in the district, but the vessel is not used in the district, then the purchaser is not liable for the district use tax and you are not required to collect the tax. It is important to note that you must retain in your records documentation of your out-of-district delivery of the vessel to the location where it will be moored. That requirement for documentation is not satisfied merely by obtaining the Regulation 1823.5 declaration from the purchaser.

Question

“(2) Many of the boats we sell are moored at Folsom Lake Marina. According to your list of zip codes, the zip code for Folsom Lake Marina (as well as El Dorado Hills), 95630 is included in the STAT [Sacramento County Transportation Authority] district. However, the marina and El Dorado Hills are located in El Dorado County. Please confirm which tax rate we are to charge for these areas.”

Answer. You are correct that in the Board's Pamphlet 44-A, New District Taxes, zip code 95630 is shown as a zip code included entirely within Sacramento County, not partially within Sacramento County. By copy of this letter, I am asking the Board's Local Tax Unit to look into this matter and correct the zip code list, if necessary. You are not required to pay the Sacramento County district transactions tax or collect the district use tax when you sell undocumented vessels to residents of El Dorado County who will moor their vessels at the Folsom Lake marina, provided that you either deliver the vessel to the marina or obtain from the purchaser the Regulation 1823.5 declaration. I note that Folsom Lake itself is located within the boundaries of three counties: Sacramento, El Dorado, and Placer. For district tax purposes, the place of use is the county where the marina is located, even though the vessel may be operated from time to time on that part of Folsom Lake which is located within Sacramento County.

Question

“(3) How much of the boat sale is to be charged at the lower rate (6%) and how much, if any, at the higher (6 ½%) rate if the 'registration address' is outside of the special district? When a boat is sold there are several different types of items on the invoice.

“(a) I assume that the factory options would be taxed at the lower rate. Please confirm.

“(b) We commonly install electronics and other permanent equipment aboard the boats. Which tax rate should we use?”

“(c) If it’s a depth sounder which mounts on a bracket designed to make the sounder removable, does the tax rate change?”

“(d) What about safety equipment (anchors, first aid kit, life jackets, mooring lines, etc.) that is not attached to the boat but is part of the equipment required for the normal safe operation of the vessel? I assume in this case that the equipment is included in the original sale and charged on the original invoice.

“(e) If the same equipment is charged for on a separate invoice from the vessel’s invoice but all invoices are paid by the customer before the boat and equipment is delivered to the customer does the answer to (d) above change?”

Answer. In answer to your questions under subdivisions (a), (b), (c), and (d) above, tangible personal property which is physically installed on a vessel is considered to be part of the vessel itself, and district tax applies according to the rules for sales of undocumented vessels set out above. This would apply to factory options, electronics and other permanent equipment installed on the vessel. However, a removable depth sounder and other safety equipment not physically attached to the vessel when the equipment is in use is not considered to be part of the vessel itself, but rather is additional tangible personal property sold by you to your purchaser. (See the Board’s Pamphlet 40, Watercraft Industry, pages 7-13). Therefore, you should report and pay transactions tax on your sales to your purchasers of this equipment regardless of the place where the vessel will be registered, unless you deliver this equipment to the purchaser at an out-of-district location.

In answer to your question in subdivision (e), the application of tax does not change depending on whether separate invoices are issued, or whether the purchaser pays the amounts invoiced before or after delivery.

Question

(4) The above examples all apply to undocumented vessels. Do the same answers apply to documented vessels?”

Answer. There are no special rules regarding sales and deliveries of documented vessels, as there are for undocumented vessels. Therefore you should apply the standard rules which relate to sales of tangible personal property. That is, if you deliver the property sold outside of the district for use by a purchaser outside of the district, then that district’s transactions tax will not apply to the sale, nor will that district’s use tax apply to the purchaser’s use of the property within the district. Please note, however, that in the case of documented vessels, but not undocumented vessels, the provisions of Regulation 1827(b)(2) will apply. If the property is delivered outside of a district to a purchaser who resides in the district, there is a presumption that the property is purchased for use within the district, and the retailer is obligated to collect the district

use tax from that purchaser, unless the retailer in good faith accepts from the purchaser a statement in writing that the property was purchased for use at a designated point or points outside a district imposing a use tax. This presumption may also be controverted by other evidence which is satisfactory to the Board that the property was not purchased for storage, use, or other consumption in a district imposing a use tax.

I enclose for your information Pamphlet 40 and Pamphlet 44, District Taxes, which includes Regulations 1823, 1823.5 and 1827. 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