

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P. O. BOX 942879, SACRAMENTO, CA 94279-0001)
TELEPHONE: (916) 322-2976
FAX: (916) 323-3387

JOHAN KLEHS
First District, Sacramento

DEAN ANDAL
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

BURTON W. OLIVER
Executive Director

September 22, 1995

M--- C. M---
Controller
A--- C--- Company, Inc.
XXXX --- ---, Suite XXX
---, TX XXXXX

Dear Mr. M---:

**Re: A--- C--- Company, Inc./ A--- C--- Corp.
No permit number**

This is in response to your letter dated July 7, 1995 regarding the application of tax to your company's activities in California. You state:

"In August, 1993, November, 1993, May, 1994, and June, 1994, we sold pay telephones to a Dallas customer and installed the phones at their locations in California. Those were our only incursions into California. We filed the appropriate reports and paid Texas sales tax on the transactions. However, it has now come to our attention that we may be liable for sales tax in California instead of Texas.

"Are the above transactions taxable under California sales tax rules? If so, what is the tax rate? Also, if the transactions are taxable, please send the appropriate form(s) to report the transactions and pay the taxes due."

DISCUSSION

A retailer generally owes sales tax on its retail sales of tangible personal property in California, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, such as when sales take place outside of California, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California unless the use is specifically exempt from tax by statute. (Rev. & Tax. Code §§ 6201, 6401, Reg. 1620.)

Telephone Sales

You state that you sold telephones to a Dallas customer. It is not clear whether the sales to that customer took place inside or outside of California. If the sales occurred in this state, with participation in the transaction by your local branch, office, outlet, or other place of business, or with participation by your agent having any connection with such branch, office, outlet, or place of business, the sales tax would be the applicable tax. (See Reg. 1620(a)(2)(B).)

However, you state that your only incursions into California were related to the installation of the telephones you sold to the Dallas customer. Thus, it appears from this statement that although your sales occurred inside this state, you do not operate a local place of business in California. If such is the case, no local participation such as that discussed above would have taken place; thus, sales tax would not apply to the transactions. Instead, since your customers purchased the telephones for use in California, they owe use tax on their use of the telephones.

Although the purchaser owes the use tax, a retailer engaged in business in this state is required to collect the use tax from the purchaser and pay it to this state. (Rev. & Tax. Code §§ 6202, 6203.) "Retailer engaged in business in this state" includes any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property. (Rev. & Tax. Code § 6203(b).)

You explain that you entered California in order to install the telephones at the customers' locations in California. Since your representatives entered California under your authority for the purpose of installing tangible personal property in this state, you are a retailer engaged in business in this state under Revenue and Taxation Code section 6203(b). As such, you must collect the applicable use tax from all your California purchasers and pay that tax to this state.

You explain that you have already paid tax to the state of Texas on these transactions. Revenue and Taxation Code section 6406 provides that a credit shall be allowed against, but shall not exceed, the California use tax imposed on a person on the use of property in this state to the extent that same person has paid tax or tax reimbursement to another state with respect to the same property. The rationale for this credit is to fully tax each retail transaction only once under circumstances where property is used by a purchaser in California after that purchaser has already incurred tax liability with respect to that property in, and paid tax or tax reimbursement to, another state.

It is not clear whether the tax you paid to Texas was imposed on the sale to or use by ACC. If so, no credit is allowable under section 6406 against the California purchaser's tax liability. If by paying "Texas sales tax on the transactions" you mean that the tax was paid with respect to your sale to the California purchaser, the section 6406 credit may be allowable.

If such Texas tax on the transaction was properly imposed and was incurred before the California use tax was incurred, your purchaser would be entitled, under section 6406, to take a credit for payment of tax or reimbursement therefor against the use tax it owes on its own use of the property in this state.

Tax Rates and Appropriate Tax Form

You ask what the tax rates are in California. The minimum combined state sales and use tax rate is currently 7.25 percent. That amount includes the state and local tax. In some counties, the total sales and use tax rate is higher. Any tax which may be applicable above 7.25 percent would be a tax adopted by a district pursuant to the Transactions and Use Tax Law. (Rev. & Tax. Code § 7251, et seq.) I will refer to such taxes as district taxes. Pamphlet 71, "California City and County Sales and Use Tax Rates," a copy of which is enclosed, includes a list of those counties that have adopted ordinances creating special districts imposing district taxes.

A district's sales tax is applicable to sales occurring in that district unless the sale is otherwise exempt from the district sales tax. A district's use tax is applicable to the use of property purchased outside the district for use inside the district. (Reg. 1827(a).) The purchaser owes the district use tax, but you may voluntarily register to collect all district taxes imposed by districts in California. (Reg. 1827.) If you do so, you will be required to collect the applicable district use taxes for all districts imposing district taxes. (Id.) If you do not voluntarily register to collect all district taxes, you are only required to collect the applicable district use tax for those districts in which you are engaged in business. (Reg. 1821.)

You are considered to be engaged in business in a district if you maintain, occupy, or use any type of office, sales room, warehouse, or other place of business, even if it is used temporarily, indirectly, or through an agent; or if you have any kind of representative operating in the district for the purpose of making sales, making deliveries, or taking orders; or if you receive rental income from leases of tangible personal property located in a district. (Reg. 1827(c).)

If you sell property that is delivered by common carrier to a customer in a tax district in which you are not engaged in business, the purchaser still owes the district use tax, but you are not required to collect it unless you have voluntarily registered to collect all district taxes. However, as a retailer engaged in business in this state, you are still required to collect the applicable 7.25 percent minimum combined statewide use tax. (Rev. & Tax. Code § 6203(b).)

I note that you do not have a California permit number. As a retailer engaged in business in this state, you are required to register with this Board. (Rev. & Tax. Code §§ 6066, 6226.) For information regarding registering with this Board, please contact our Out-of-State District Office at 450 N. Street, P.O. Box 188268, Sacramento, CA 95818-0268, (916) 322-2010.

You ask that we send you the appropriate form on which you should report the transactions discussed in this letter. The form on which you should report your sales subject to

use tax and sales subject to sales tax, as well as your purchases for your own use in this state subject to use tax, is the "State, Local & District Sales & Use Tax Return." When you register, you will be instructed to file your tax return on a monthly, quarterly, or annual basis. The Board will send you a tax return form to complete at the close of each reporting period.

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:es

cc: Out-of-State District Administrator (OH)
Enclosure (Pamphlet 71)