



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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January 3, 1990

Mr. REDACTED TEXT

REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in reply to your September 5, 1989 letter regarding the application of California sales and use tax to an auction sale by REDACTED TEXT. You noted the following facts:

“On October 5 & 6, 1989 REDACTED TEXT is holding a mining equipment auction in Louisville, Kentucky. The equipment being offered is located in 28 different sites in 10 states and 2 Provinces in Canada. Some of the equipment is physically located in your state but will be sold from Louisville, Kentucky F.O.B. its current location.

“The auction will work in the following manner:

- 1) Buyers inspect equipment in each state at each individual location
- 2) Buyers then come to Louisville, Kentucky on October 5 & 6 and bid at public auction and buy the equipment they wish to purchase.
- 3) All purchases will be paid for in Louisville, Kentucky on auction day for all equipment sold.
- 4) Arrangements made for moving equipment from current locations by the new owners”

You sent a copy of the information brochure which describes the property being auctioned. The property located in California was a number of electric crawler shovels located at the REDACTED TEXT, California. We assume that REDACTED TEXT does not own the electric crawler shovels.

Given this information, you first asked whether the sale of mining equipment located in this state is exempt from sales tax if sold at auction from another state.

The California sales tax is imposed on retailers for the privilege of selling tangible personal property at retail in this state. (Rev. & Tax Code § 6051.) Revenue and Taxation Code section 6015 defines “retailer” to include every person engaged in the business of making sales at auction of tangible personal property owned by the person or others. Therefore, for purposes of the California sales and use tax, whether or not REDACTED TEXT owns the equipment it auctions, REDACTED TEXT is a retailer. However, unless there is participation in the sale in any way by any local branch, office, outlet or other place of business of REDACTED TEXT in this state, or an agent or representative operating out of or having any connection with such local branch, office, outlet or other place of business of REDACTED TEXT in this state, the California sales tax does not apply. (Sales and Use Tax Reg. 1620, Interstate and Foreign Commerce, subd. (a)(2)(A).) The term “other place of business” as used in Regulation 1620 includes the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the retailer’s functions in this state, particularly in relation to sales.

We note that REDACTED TEXT closed out its California seller’s permit on August 26, 1985; however, the auction brochure notifies prospective bidders to contact REDACTED TEXT at a California telephone number (area code 619) for information and directions. We assume that REDACTED TEXT is an employee of the owner and not an employee of REDACTED TEXT. Therefore, we will also assume that REDACTED TEXT has no such place of business in California which would participate in the sale and that REDACTED TEXT is not liable for sales tax on the sale.

Revenue and Taxation Code section 6201 imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. Every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. (Rev. & Tax. Code § 622.) Generally, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state is required to collect the use tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the Board. (Rev. & Tax. Code § 6203.) If REDACTED TEXT is a retailer engaged in business in this state, then REDACTED TEXT is required to collect use tax from purchasers who purchase electric crawler shovels at auction for use in this state, regardless that REDACTED TEXT has no local place of business which participates in the sale. We do not believe that REDACTED TEXT’s conducting the auction outside California prevents the imposition of the duty to collect the tax.

Revenue and Taxation Code section 6010.5 provides that, for purposes of the Sales and Use Tax Law, the place of the sale or purchase of tangible personal property is the place where the property is physically located at the time the act constituting the sale or purchase takes place. California Uniform Commercial Code section 2328, subdivision (2), provides that a sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Although such act may occur in Louisville, under Revenue and Taxation Code section 6010.5, for purposes of the sales and use tax, the sale occurs in California, since the equipment is physically located here at the time of sale.

Section 6203 defines “retailer engaged in business in this state” to mean and include:

“(a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

“(b) Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property.

“(c) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

“(d) Any retailer soliciting orders for tangible personal property by means of a telecommunication or television shopping system (which utilizes toll free numbers) which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this state.

“(e) Any retailer who, pursuant to a contract with a broadcaster or publisher located in this state, solicits orders for tangible personal property by means of advertising which is disseminated primarily to consumers located in this state and only secondarily to bordering jurisdictions.

“(f) Any retailer soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities.

“(g) Any retailer owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business in this state.

“(h) Any retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this section.

“(i) Any retailer who, pursuant to a contract with a cable television operator located in this state, solicits orders for tangible

personal property by means of advertising which is transmitted or distributed over a cable television system in this state.

“(j) Notwithstanding Section 7262, a retailer specified in subdivision (d), (e), (f), (g), (h), or (i) above, and not specified in subdivision (a), (b) or (c) above, is a ‘retailer engaged in business in this state’ for the purposes of this part and Part 1.5 (commencing with Section 7200) only.”

We do not have sufficient facts to determine whether or not REDACTED TEXT is a retailer engaged in business in this state under section 6203. Based solely on the facts you provided, we conclude that REDACTED TEXT is not so engaged under subdivision (a) of section 6203 by virtue of the owner’s storing its own equipment in California which REDACTED TEXT sells on behalf of the owner. Nor do we believe that REDACTED TEXT is engaged in business here under subdivision (b) by virtue of the owner delivering its property in California to the person who purchases the property at auction in Louisville. However, we suggest that you review the above quoted subdivisions of section 6203 to determine whether other factors may cause REDACTED TEXT to be a “retailer engaged in business in this state”. For purposes of this opinion, we will assume that REDACTED TEXT is not.

Section 6007 of the Revenue and Taxation Code defines “retail sale”:

“A ‘retail sale’ or ‘sale at retail’ means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property.

“The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.”

If REDACTED TEXT is not engaged in business in this state, then the owner’s delivery of the electric crawler shovels in this state to a consumer or person for redelivery to a consumer, pursuant to REDACTED TEXT’s retail sale, is a retail sale in this state by the owner, and the sale is subject to sales tax.

You then asked, if tax applies, what the rate of tax is.

The combined California state and local sales and use tax is 6 percent of the gross receipts or sales price. REDACTED TEXT, California, is located in Riverside County. Effective July 1, 1989, the Riverside County Transportation Commission Transactions and Use Tax became effective and imposes a ½ percent transactions (sales) and use tax. Therefore, the tax rate in Riverside County is now 6 ½ percent. If the sale of the electric crawler shovels is subject to sales

tax, the retailer is required to pay the tax at the rate of 6 ½ percent. If the sale is subject to use tax, REDACTED TEXT is required to register with this Board and collect the tax from the purchaser only if REDACTED TEXT is engaged in business in the district and makes the sale to a person who purchases the property for use in the district.

Finally, you asked, "If there is tax, will a sales tax exemption number from dealers or other exempt persons or companies from another state be allowed by your state?"

A California retailer may accept a resale certificate from a dealer from another state. We caution that the certificate should be in substantially the same form as the California Resale Certificate and include the person's out-of-state seller's permit number. See Sales and Use Tax Regulation 1668, Resale Certificates.

As noted above, our conclusions in this letter are predicated upon certain assumptions. If our assumptions are incorrect, the application of tax will be different. Therefore, if you have further relevant facts or need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

bc: Out-of-State District Administrator
Mr. E. L. Sorensen, Jr.