

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
916/445-3237

January 30, 1981

Ms. R--- B---, President  
R--- T--- Systems, Inc.  
XXXX --- Blvd.  
--- ---, CA XXXXX

No Permit

Dear Ms. B---:

This is in response to your letter of December 29, 1980 in which you requested clarification as to the correct application of tax to orders placed through your company's WATS line answering service.

We understand that your clients advertise your "800" numbers on television, radio, magazines, etc. in every state in the nation for the purpose of taking orders by telephone. One of your clients wishes to know the correct application of the California sales and use tax in the situations described below.

Before answering your questions specifically, we will first make some general statements concerning the correct application of tax in this area.

Revenue and Taxation Code Section 6203 requires all retailers who are engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state to collect the tax from the purchaser and pay it to the board. A "retailer engaged in business in this state" is defined in Section 6203 as:

"(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 in this state.

"(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 taking of orders for any tangible personal property.”

For purposes of analysis, we will assume that your “800” number facilities and operators are located in California.

An out-of-state retailer who utilizes your “800” telephone service for the purpose of taking orders will be considered to be a “retailer engaged in business in this state” since you will be considered a representative operating in this state under the authority of the retailer for the purpose of taking orders as provided in Section 6203(b). Accordingly, out-of-state retailers who utilize your “800” telephone service will be required to register with this Board and collect and report use tax on sales of tangible personal property to purchasers in California.

Retailers who are already doing business in California will be required to report and pay either sales or use tax whenever a sale is made to a California purchaser for delivery in this state. If delivery is from within California to an out-of-state location, tax will not apply provided the property is shipped to the out-of-state location by facilities operated by the retailer or by delivery to a carrier, customs broker or forwarding agent, for shipment to such out-of-state locations.

Your specific questions, and our answers follow.

First, you wish to know whether California tax is applicable on orders received from callers from out of the state of California for delivery to out of state locations?

If the purchaser is located out of state, the retailer is located out of state, and the property purchased is sent from the location of the out-of-state retailer to an out-of-state location, neither sales nor use tax will apply to the sale even though the order is placed through an “800” number located in California.

If the retailer is located in California and the property purchased is shipped directly to the out-of-state purchaser by either facilities operated by the retailer or delivery by the retailer to a carrier, customs broker or forwarding agent, tax will not apply to the sale. This would be true whether or not the order was placed by an in-state or out-of-state purchaser.

Secondly, you wish to know whether the California tax is applicable on orders received through an “800” number from callers within California for delivery to California locations?

Sales tax will apply if the in-state order is placed through the “800” number with a retailer located within California and the property is shipped from within California, since the sale occurs within California and delivery to the purchaser is in California.

If the retailer is located out-of-state and the property is sent from an out-of-state location, use tax will apply since, as stated above, the retailer will be considered to be “engaged in business in this state” by virtue of the fact that it has a representative in this state for the purpose of taking

orders as provided in Revenue and Taxation Code Section 6203 and Sales and Use Tax Regulation 1683 (copy enclosed). As such, the out-of-state retailer is required to collect and report use tax on its taxable sales of tangible personal property in California. (Whether they are through the 800 number or through other means, such as wholly by mail order since the retailer engaged in business in Cal is engaged here for all sales and use tax purposes. DHL 4/24/97.)

Very truly yours,

Mary C. Armstrong  
Staff Counsel

MCA:ba  
Enc.