



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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August 17, 1995

BURTON W. OLIVER
 Executive Director

Ms. P--- A. D---
 B--- E--- Corporation
 --- --- Plaza
 --- ---, FL XXXXX-XXXX

Re: SY --- XX-XXXXXX

Dear Ms. D---:

This is in response to your letter dated June 26, 1995 regarding the application of tax on video rental coupons redeemed at your company's stores.

You state:

"B--- V---, Inc. (BVI) is in the business of renting and selling video tapes. BVI desires to enter into an agreement with ABC Co. to sell them 25,000 coupons for a free video rental at a discounted price of \$2.50 each. ABC Co. will distribute these coupons as a gift to its customers. The typical rental price for one video in California is \$3.00. These coupons may be redeemed in any BVI store in California and Arizona prior to December 31, 1995."

We understand you to ask how California sales or use tax applies to this transaction.

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempted from taxation by statute. (Rev. & Tax. Code § 6051.) Taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of materials, service, or other expense of the retailer passed on to the purchaser unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012(a).) Taxable gross receipts do not include cash discounts allowed and taken on sales. (Rev. & Tax. Code § 6012(c)(1).)

We understand that BVI will sell the ABC Co. 25,000 coupons at a total price of \$62,500 (25,000 coupons at \$2.50 each). These coupons entitle the holder to a free video cassette rental at any BVI store in California or Arizona and will be distributed at no charge by ABC Co. to its customers. Under these facts, we regard BVI as selling nontaxable rights to free video cassette rentals. The actual coupons are a record of the rights to the free rentals and do not constitute the sale of tangible personal property. (See e.g., Business Taxes Law Guide Annot. 280.0580 (1/25/61) (a gift certificate is evidence of an intangible right and is not subject to tax).) We also regard ABC Co.'s distribution of these coupons to its customers as the use of intangible property. As such, no tax applies on either BVI's sale of these coupons or on ABC Co.'s gift of these coupons to its customers.

ABC Co.'s customers will then present these coupons at a BVI store for the rental of a video cassette. The rental or lease of video cassettes, video tapes, and video discs for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the video cassette, video tape, or video disc is a continuing sale and purchase and tax applies measured by rental receipts. (Rev. & Tax. Code §§ 6006(g)(7), 6006.1, 6010(e)(7), 6010.1; Reg. 1660(d)(2).) The tax imposed on this type of lease is generally a use tax on the lessee. (Reg. 1660(c)(1).) Thus, BVI, as lessor of the video tapes, is responsible to collect the tax from the lessee at the time rentals are paid by the lessee and remit that tax to this Board. (Rev. & Tax. Code § 6203; Reg. 1660(c)(1).) Thus, the remaining issue is what is the measure of tax, if any, on BVI's lease of video cassettes to ABC Co.'s customers presenting a free rental coupon.

The application of tax in this situation is based on the nature of the coupon presented by ABC Co.'s customers. With a traditional manufacturer's coupon, the retailer is reimbursed the face amount of the coupon by the coupon issuer and must include in its measure of taxable gross receipts all amounts received from the manufacturer and customer on the sale of the property subject to that coupon. (Business Taxes Law Guide Annot. 295.0430 (5/9/73).) With a store coupon (i.e., a coupon in which the retailer receives no reimbursement from any third party), the retailer accepts a reduced amount plus a coupon towards the sale of property subject to that coupon. Since the retailer does not receive the amount of the discount, the discounted amount is not part of the retailer's taxable gross receipts. (Rev. & Tax. Code §§ 6011(c)(1), 6012(c)(1).)

In this case, BVI is renting video cassette tapes to customers who present a coupon for a "free" rental. We regard this coupon like that of a manufacturer's coupon since BVI will have received compensation from a third party (the ABC Co.) for the rental of its video tapes via amounts paid by ABC Co. for the coupons. Thus, the rental receipts from the lease of BVI's video tapes in California will consist of the \$2.50 amount received from the ABC Co. for that customer's coupon. Tax on this amount is imposed on the lessee (the person presenting the coupon) of the video cassette tape and BVI is required to collect this tax and remit it to this Board. California tax does not apply on the \$2.50 amount received for leases of video tapes (via

coupon) in Arizona or on the amounts BVI received on its sale of "free coupons" which will not be redeemed for a free video rental in either California or Arizona.

We hope this answers your questions. If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:cl

cc: Out-of-State District Administrator