

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
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September 9, 1991

Mr. [K]  
Operations Manager  
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XXX --- ---  
--- ---, California XXXXX

Re: S- -- XX-XXXXXX

Dear Mr. [K]:

Assistant Chief Counsel Gary J. Jugum has assigned your letter to him of August 2, 1991, to me for a response. You have requested advice as to the proper tax rate applicable to charges which the [A] pays for printing services.

According to your letter, the [A] is a free weekly paper that publishes classified and display (retail) advertisements. Its circulation is similar to the [P] which circulates in Sacramento. Your paper is printed in Solano County, presumably by a printer pursuant to a contract. We also assume that the printer has offices only in Solano County and ships the printed papers to the [A] by means of its own facilities.

OPINION

B. Transactions and Use Tax

1. Generally

In California, there is a statewide tax rate of 7.25%. This rate is made up from the California Sales and Use Tax (§§ 6051, et. seq., and 6201, et. seq.), and the Bradley-Burns Uniform Local Sales and Use Tax (§§ 7200-7212). In 1969, the Legislature enacted the Transactions and Use (hereinafter "District") Tax Law. (Rev. & Tax. Code §§ 7251 et. seq.). Pursuant to various enabling statutes, a number of counties have established county-wide taxing districts. To support such districts, transactions and use taxes are imposed at rates of 0.25% or 0.5% of the gross receipts from the sales within the district (or districts, if there is more than one in a county) of tangible personal property sold at retail or of the sales price of property whose use, storage, or consumption within the district is otherwise subject to tax. (§§ 7261(a)(1), 7262(a), 7285, 7285.5).

## 2. “Out-of-District” Exemption

These are some exceptions to the District Tax. Sections 7261 and 7262 require that each district imposing a tax ordinance must include in its ordinance certain uniform provisions. One of these required provisions exempts from the transactions tax imposed on retailers, but not the use tax imposed on purchasers, sales of property to be used outside its district pursuant to a contract of sale between the retailer and the purchaser. (Section 7261(a)(6).) In interpreting and applying this exemption, Title 18, California Code of Regulations, Regulation 1823(a)(2) provides that the transactions tax does not apply to gross receipts from sales of tangible property:

“(B) To be used outside the district when the property sold is shipped to a point outside the district pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. If the purchaser uses the property in a district imposing transactions (sales) and use taxes, the use tax may apply.”

### B. Retailer’s Duty to Collect District Use Tax

Whether a retailer not located in a district (or located in a different district than the purchaser) is obligated to collect the district use tax from the purchaser depends upon whether the retailer is “engaged in business” in the purchaser’s district, as defined in Regulation 1827. In summary, Regulation 1827(b)(1) & (c) provides that if a retailer has either a place of business in a district, or has representatives or agents operating in a district, for the purpose of selling, delivering, or taking orders for tangible personal property, then the retailer is obligated to collect that district’s use tax from the purchaser if the retailer ships the property sold into the district, or participates in the district in making the sale.

### C. Tax Consequences to the Advertiser

As you are aware, San Francisco County has two countywide taxing districts, BART and San Francisco Transportation Authority, for a combined rate of 1%. Solano County has no such district at this time.

First of all, there is a route by which the [A] may qualify for an exemption from tax. If it qualifies as a printed sales message under Sales and use Tax Regulation 1541.5, then sales to it are exempt from tax.

Second, it is the printer, as the retailer, that pays sales tax, not the purchaser. The retailer owes the sales tax, but it may collect sales tax reimbursement from the purchaser pursuant to agreement. (Civ. Code § 1656.1.) The purchaser, however, owes the use tax which the retailer, pursuant to the above authority, may have a duty to collect.

The printer makes its sales in Solano County, outside any taxing district. Therefore it pays sales taxes and may collect sales tax reimbursement at the statewide rate of 7.25%. We have previously determined that giving away tangible personal property constitutes a taxable

use of such property which occurs where the donation is made, in this case the county of San Francisco. As the purchaser is liable for use tax, the [A] owes the district use taxes. If the printer makes sufficient deliveries into San Francisco County, or has sales agents or other representatives there, it has a duty under the above authority to collect such use taxes, measured by its charges. If that is the case, then the printer collects district use tax, for a total rate of 8.25%.

For your information, I have enclosed copies of Regulations 1541, 1541.5, 1823 and 1827, as well as Board of Equalization Pamphlet 44-A, "Questions and Answers on District Taxes". I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid  
Tax Counsel

JLW:es

Encs.: Regs. 1541, 1541.5, 1823 & 1827  
Pamphlet 44-A