STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

September 9, 1991

Mr. [V]
[M]
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XXXXX --- ---
--- ---, California XXXXX

RE: [C]
[No permit number]

Dear Mr. [V]:

Due to his transfer to new responsibilities, Senior Tax Counsel John Abbott has assigned to me the responsibility of answering your letter to him of June 24, 1991. I am sorry that it has taken me so long to respond. I have only just returned from a stint with the Air Force Reserve. You have questioned the Legal Division's conclusion, as expressed in Mr. Abbott's memorandum dated April 30, 1990, to Larry Micheli, Supervisor, Local Tax Section, (attached to your letter) that the above taxpayer ("[C]") is not required for Bradley-Burns Uniform Local Sales Tax ("local tax") purposes to hold a seller's permit for each location at which it holds an auction.

I. FACTUAL BACKGROUND

You represent [R], an agency which makes its money by researching the operations of various companies with an eye to convincing the Board to, among other things, re-allocate local tax revenues to municipalities in which those companies have field sales offices. Your client receives a percentage of the moneys which are re-allocated to its clients.

You set for the following factual scenario:

> "… Auctioneer maintains a permanent place of business in Southern California. Twice a year, auctions of classic cars are held at two additional locations, X and Y, also in Southern California. Year after year, Auctioneer returns to X and Y to

auction off its classic cars. Auctioneer maintains a business license and a motor vehicle dealer license for each X and Y as well as for its permanent location."

Your letter references[C], which is located in [city 1]. My review of the file indicates that the city at issue here is [city 2]. The auction site is a hotel within the city limits, and the taxpayer has sold cars at these regularly scheduled auctions for a period of approximately ten years.

OPINION

As I understand it, your argument runs along this line. Revenue and Taxation Code Section 7205 states that local tax is allocated to the city, county, or project area that is the place of sale, and the "place of sale" for sellers which have more than one place of business is determined by Board regulations. (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) Regulation 1565 provides that auctioneers are retailers and required to hold seller's permits. Regulation 1802(b)(2) states that the place of business for sellers having more than one place of business in this state which participate in the sale is the place of business where the principal negotiations take place. An auctioneer's place of sale is deemed to be the place where the auction takes place. (Reg. 1802(b)(4).) Regulation 1699(a) requires a permit for each place of business at which transactions relating to sales are customarily negotiated with customers. The auctions regularly take place in [city 2], and so that city is the "place of sale" for local tax allocations.

Unfortunately, we cannot agree with your conclusion. Your definition of the issue assumes the answer to your question – the word "place" means "city." It is within the discretion of the Board to determine when sub-permits should be issued, and the Board's interpretation of its own regulation is entitled to great weight. (American Hosp. Corp. v. St. Bd. of Equalization (1985) 169 Cal.App.3d 1088, 1093 [215 Cal.Rptr. 755].) As the agency charged with the administration of the Sales and Use Tax Law, the Board has a vital interest in upholding the fairness and integrity of those cases. (Decorative Carpets, Inc. v. St. Bd. of Equalization (1962) 58 Cal.2d 252, 255 [23 Cal.Rptr. 589. 373 P.2d 637].) The Board must consider the burden that would be placed on retailers, such as construction contractors and auctioneers, who have a permit for their permanent place of business but may actually make sales at different locations within a county. For these reasons, the Board has for several years interpreted "place" to mean "county" in the context of such retailers. It is reasonable for the Board to decide that when an auctioneer holds sales at a particular location for a period of less than thirty days, such sales locations are so temporary in nature as not to justify imposing upon such auctioneers the burdens associated requiring them to obtain subpermits for those locations. As the city has itself admitted in previous correspondence, it would be administratively difficult for the Board to require auctioneers to obtain subpermits for all of their temporary auction locations throughout the state. Therefore, local tax revenues from such sales are placed in the countywide unallocated pool.

In addition, the comparison of these auction locations to the "branch sales office" mentioned in Regulation 1699(a) is not apt. They are not permanent offices but temporary

spaces occupied for a few days at most. The auctioneer is likely dispatched from the central office and remains under its control. [C] has no proprietary interest in these locations, but merely occupies them under license from the hotel. They thus bear none of the earmarks which we have consistently required that a forward operating location possess before the Board will re-allocate local tax revenues to the project area, city or county where it is located.

This practice of allocating the local tax revenues from temporary locations to the countywide pool was validated by the court in City of San Joaquin v. St. Bd. of Equalization (1970) 9 Cal.App.3d. 365 [88 Cal.Rptr. 12]. The court pointed out that the pooling system was "a statistical accounting technique to enable the Board to allocate, as expeditiously and economically as possible, to each city which has joined the uniform sales and use tax program, its fair share of sales taxes collected by the board on that city's behalf." This accounting technique was worked out with representatives of interested cities and counties. (Supra., 9 Cal.App.3d at 375.) The Court goes on to point out that it is a part of the contract which the city signed, without protest or objection, to engage the Board to collect and administer its local taxes. (Ibid.) The Court then makes the following comment:

> "Admittedly, under the pooling procedure adopted by the Board, [the city] is not allocated the exact amount of sales taxes which it imposes in connection with [sales] within its boundaries; in this sense at least, [the city's] sales taxes are allocated to other jurisdictions. However, [the city] also shares in the sales tax revenues of other cities under a formula designed to give each city its fair share of all sales taxes collected throughout the county which the city is located. … Significantly, [the city] has offered no evidence to prove that it has actually sustained a loss of tax revenues by virtue of the Board's accounting technique. … [T]o foist upon the Board the duty of returning the taxes collected to each city on a transaction for transaction basis would destroy [the economic advantage of having the Board collect local taxes under its system]."

(Ibid. at 376.)

The Board is not required to change this policy merely because the auctioneer has held auctions at the same location for several years or that substantial amounts of revenue are generated as a result of these auctions. An allocation that is reasonable otherwise is not rendered invalid because a particular case does not fall precisely within its parameters:

> "'Similar apparent hardships are inherent in every classification made for the purpose of regulation. Some close cases must always fall just inside and others just outside of the line delineating the class, wherever drawn, and the regulation will appear to operate with especial harshness upon those which happen to fall just inside. But the line must be drawn somewhere or there can be no classification and the courts have recognized that if the classification is reasonable in its overall operation it is not to be stricken down because of its application to a particular case the may lie just inside its borders.'"

(Gen. Elec. Co. v. St. Bd. of Equalization (1952) 111 Cal.App.2d 180, 189 [244 P.2d 427], quoting Ferrante v. Fish & Game Com. (1946) 29 Cal.2d 365, 374 [175 P.2d 222].) Or, as Sherlock Holms put it, "Exceptions are invidious." ("The Mazarin Stone.")

III. CONCLUSION

In sum, we concur with Mr. Abbott's memorandum cited above. Administrative interpretations of the Board's regulations are presumptively reasonable, and, in this case, Board has reasonably determined that an auctioneer must do business at a forward location for at least thirty days before it must obtain a subpermit for that location. This rule reduces the administrative burden on both the Board and the auctioneer. In addition, because the revenues from the temporary location are allocated to the pool of Orange County, [city 2] shares in revenues derived from all sales within Orange County, in proportion to its total sales, so the city cannot show that it has lost revenue. Nor can it show that this rule is unreasonable in its overall application, even assuming it could show hardship in its own case. The possibility that there may be a difficulty in a particular case does not invalidate the general rule. Finally, this allocation system was validated in court over twenty years ago.

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

cc: Larry Micheli, Supervisor, Local Tax