

M e m o r a n d u m**710.0005**

To : Larry Micheli
Supervisor, Local Tax Section

Date: December 18, 1992

From : John L. Waid
Tax Counsel

Subject: S- --- XX-XXXXXX
[P]
Bradley-Burns Tax Allocation-City of [C]

I am answering your memorandum to me dated December 10, 1992, regarding the allocation of local tax revenues derived from [P]'s sales. As I understand it, [M] is claiming that [P] makes sales at its office in the City of [A] and that local tax revenues should be allocated there under Regulation 1802(a)(2).

As you remember, you, me, Staff Counsel Don Fillman, and Bob Wils of your office, and [DW], [P]'s Western Regional Manager, [LT], a [P] employee and member of the [C] City Council, and [MN], [C]'s Financial Director, met at your office on December 9, 1992, to discuss [P]'s sales operation in California. [P] is in the business of making electrical cable for utilities. It sells directly to the larger utilities but may sell through distributors to the smaller ones.

[P] maintains its plant and its' Customer Service Center ("CSC") in [C]. It also maintains an office in [A] for its account managers. The account managers are engineers who work with the utilities to determine the needs of the customer- i.e., specifications, materials, etc. If [P] makes products that fit that utility's needs, [P] is placed on its list of approved sources.

When a utility decides to make a purchase, it sends out a Request for Bid (RFB) to its approved sources. The RFB goes to the CSC at [C]. CSC renders the quote back to the customer. If [P] gets the contract, it is let through the CSC and executed at [C]. The account managers maintain customer contact during this process. They have, however, no pricing authority or power to make changes in the bid. If a problem with the bid is discovered, the CSC makes the required modification. You confirmed in your memorandum to me dated December 17, 1992, that the account managers are salaried employees and do not receive commissions.

The account managers also maintain customer contact while the contract is in force. Most of [P]'s customers have an on-going relationship with [P]. The account managers might be servicing several contracts at once.

OPINION

As you know, Section 7205, interpreted and implemented by Regulation 1802, provides that, for the purposes of local tax allocation, all retail sales take place at the retailer's place of business unless the property is delivered out of state. If a retailer has more than one place of business in this state which participates in the sale, the sale occurs at the place of business where the principal negotiations are carried on. (Reg. 1802(a)(2).)

In our opinion, the term "principal negotiations" means that when the principal point of contact between the seller and its prospective customers is through sales personnel located in or working out of a branch sales office, that sales office is the "place of sale" for Bradley-Burns purposes notwithstanding the fact that another office has final approval and price discount authority. In order for a retailer to be required to get a seller's permit for an operating location, however, orders must be customarily taken and contracts negotiated there whether or not merchandise is stocked there. (Reg. 1699(a).) The moral of the story, then, is that "principal negotiations" consist, at a minimum, of customer contact that leads directly to the retailer obtaining a sales contract.

Here, the account managers' customer contact is limited to getting [P] products placed on the utilities' lists of approved sources. Sales are actually made through competitive bids requested on an as-needed basis through the CSC. [P] is one of many bidders for the job. We are of the opinion that where the actual sale is made through the bid process, the office that makes the bid is the place of sale for local tax allocation purposes. That is the office which has the customer contact leading directly to a sale. In this case, the CSC bids on the sale and may modify the bid based on customer feedback obtained by the account managers who themselves may not make or modify bids. Thus we conclude that the CSC is the place of sale for the transactions at issue, and the local tax revenues derived therefrom should be allocated to [C].

We also agree with your view as expressed in your memorandum that, since [P] ships inventory directly from out-of-state stocks of goods to the customer, the local use tax derived from those transactions should be allocated to the county of destination on a county-wide basis. We understand, however, that the primary area of dispute with [M] involves the participation of the [A] office in [P]'s sales.

JLW:es

cc: Mr. Don Fillman