

**M e m o r a n d u m****710.0014**

To: Mr. Larry Micheli, Supervisor  
Local Tax Unit

Date: April 30, 1990

From: John Abbott  
Senior Tax Counsel

Subject: Bradley-Burns tax allocation - auctioneers

In your February 2, 1990 memorandum to me, you write:

“It has been our policy to allocate the local tax from sales made by auctioneers at locations other than their permanent place of business on a countywide basis to the county where the auction was held. This policy has been based on Regulation 1802(b)4 and our agreements with the local jurisdictions.

“We are not being questioned on this policy by [a city] where an auctioneer conducts two auctions of classic cars a year at the same location. The city contends that the recurring nature of the auction at the same location makes the auction site a place of business for the taxpayer. The city contends that the local tax from auctions at this location should be allocated to the city and not on a countywide basis.

“We are requesting your thoughts on whether an auctioneer conducting auctions of a recurring nature at the same location would qualify as a place of business requiring the issuing of a subpermit and the allocation of local tax to the city.”

Opinion

I assume the auctioneer is a vehicle dealer licensed by the Department of Motor Vehicles, so that his sales are subject to sales tax, not use tax. (Reg. 1610(b) and (c)). Revenue and Taxation Code 7205, which determines the place of sale for Bradley-Burns tax allocation purposes, provides that the place of sale is the retailer’s “place of business.” What constitutes a place of business is not defined in Section 7205. Regulation 1699, Permits, provides in subdivision (A) that a retailer is required to hold a permit for each place of business at which transactions relating to sales are customarily negotiated, including branch sales offices at which orders are customarily taken and contracts are negotiated.

Two provisions of the Board’s Compliance Policy and Procedures Manual also apply in this situation. Section 225.115, Auctioneers, states in part:

“Auctioneers who have a permit for a permanent place of business are not required to secure separate permits for each sale they conduct away from the permanent site. If, however, sales at other locations will extend over a period of more than 30 days, they should be required to secure separate permits.”

Also, Section 225.065, Temporary Sales Tax Permits, states in part that: “Taxpayers who hold seller’s permits for permanent places of business, and also conduct operations of a temporary nature in places such as fairs or carnivals, are not required to hold separate permits for temporary operations.” This section considers a temporary selling operation to be one which does not exceed 30 days.

Our opinion is that nothing in Section 7205 or Regulation 1699(a) requires an auctioneer who has a seller’s permit for a permanent place of business to obtain a separate subpermit for all auction locations where they will be making sales for temporary periods of less than 30 days. It would not make any difference whether the auctioneer returns to the same site on a regular basis for these auction sales. The administrative guidelines established in the Compliance Policy and Procedures Manual reasonable interpret the place of business provisions as not including a temporary auction site. Therefore, our view is that the city’s contention is not correct.

JA:jb