

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)  
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August 26, 1994

BURTON W. OLIVER  
*Executive Director*

REDACTED TEXT

Dear REDACTED TEXT:

As you know, your letter dated March 18, 1994 to Controller Gray Davis regarding the application of sales and use tax was referred to the Audit Evaluation and Planning Section of the Board of Equalization since it is this agency that administers the California Sales and Use Tax Law. As noted in the letter to you dated June 10, 1994 from Dennis Fox, supervisor of the Audit Evaluation and Planning Section, your inquiry was then referred to the Legal Division due to the nature of your questions.

Your client is a vendor who manufactures, prints and purchases for resale business forms and supplies. (You refer to your client as "the vendor" and I will use the same term.) The vendor stores the business forms and supplies in its warehouses. When needed by customers, the vendor ships the forms and supplies by common carrier to the customers in California and in other states. Some customers periodically reorder sizeable quantities of business forms and supplies to be stored in the warehouse until the stock has been withdrawn. A customer may agree to a specific limit to the time that the stock of forms and supplies maintained by the vendor for the customer will be stored without being completely requisitioned. Some customers have multiple business locations. In those cases, the vendor does not know where a specific order is going until it is requisitioned and shipped from the warehouse.

You describe two categories of customers. A "receipts" customer is invoiced for the property it purchases when the vendor receives the property ordered by the customer. A "withdrawal" customer is invoiced for property it purchases when the property is withdrawn from the vendor's warehouse for shipment to the customer. Invoices are due and payable within 30 days of the invoice date. The contract for both a receipts customer and a withdrawal customer provides that title to the property passes to the customer when payment for the property has been made in full.

The vendor also performs activities pursuant to the contract such as storage, pick and pack, shrink wrap, shipping, and personal delivery. Customers are invoiced on a monthly basis for such activities performed that month. The timing of invoices for these charges is the same for receipts customers and withdrawal customers. Our responses to each of your questions follow. When you use the term "vendor warehouse" in your questions, I assume you mean your client's warehouse. If I do not comment on the distinction between receipts customers and withdrawal customers, there is none.

**Question 1:** "In a multistate transaction where forms and supplies are shipped from a vendor warehouse in a neighboring state to a customer location in your state and the forms and supplies were subject to sales tax in the warehouse state, if your state taxes the use of the forms and supplies, is a credit allowed for the sales tax paid to the warehouse state? Please respond for a 'receipts' and 'withdrawal' customer."

**Answer:** Under Revenue and Taxation Code section 6406, a credit is allowed against, but not to exceed, use taxes imposed by California to the extent that the taxpayer has paid a retail sales or use tax, or reimbursement therefor, imposed with respect to the property by any other state prior to the consumption in California. Under these facts, the vendor's sale to its customer would occur outside California. (Rev. & Tax. Code § 6010.5, U.C.C. § 2401.) Thus, the applicable California tax would be use tax. (Rev. & Tax. Code § 6201.) This means that the credit provisions of section 6406 may be applicable. If the customer actually incurs tax or tax reimbursement liability in the other state prior to incurring use tax liability in California, a credit is allowed. (The California use tax liability would be incurred under these facts upon entry of the property in California.) For example, if the other state regarded the sale as an exempt interstate sale, no credit would be available even if tax was mistakenly paid to the other state (a refund would presumably be available in that other state). On the other hand, if the sale was complete in the other state and did not qualify for an exemption in the other state (see the discussion below regarding California's application of the interstate exemption) a credit would be available under section 6406.

**Question 2:** "In a multistate transaction where forms and supplies are shipped from a vendor warehouse in your state to a customer location in another state, does your state tax the sale of the forms and supplies? Please respond for a 'receipts' and 'withdrawal' customer. Assume the ultimate destination of the goods is always known and there is no specific amount of time (days, months, or years) indicated in the Agreement regarding how long a stock of forms and supplies can be maintained in the warehouse without being completely requisitioned."

**Answer:** The exemption relevant to this transaction is provided by Revenue and Taxation Code section 6396, which exempts sales from sales tax when the contract of sale requires the property to be shipped, and the property is shipped, to a point outside this state by the retailer by means of: (1) facilities of the retailer, or (2) delivery in this state by the retailer to a common carrier for shipment to an out-of-state point. (Reg. 1620(a)(3)(B).)

You indicate that you deliver the property to a common carrier for shipment outside California, and that the property is, in fact, shipped outside California. Thus, the remaining question is whether the contract of sale requires delivery outside California. Since it is known at the time of contracting that the ultimate destination of the property will be outside California and the property is shipped pursuant to that contract provision, this requirement is satisfied. Thus, the sales are exempt from sales tax. This conclusion is specifically based on the assumption that the purchaser is not authorized under the contract to direct the property to be diverted to a California destination.

**Question 3:** "In an intrastate transaction, where forms and supplies are shipped from a vendor warehouse in your state to a customer location in your state, in what jurisdiction (county, city or otherwise) is the sale taxable, the origin location (warehouse) or destination location (customer location)?"

Please respond for a 'receipts' and 'withdrawal' customer. Assume the ultimate destination of the goods is always known and there is no specific amount of time (days, months, years) indicated in the agreement regarding how long a stock of forms and supplies can be maintained in the warehouse without being completely requisitioned."

**Answer:** All these sales will be subject to tax at a rate of at least 7 1/4 percent, the minimum combined statewide rate. Any tax which may be applicable above 7 1/4 percent would be a tax adopted by a district pursuant to the Transactions and Use Tax Law. (Rev. & Tax. Code § 7251, et seq.) I will refer to such taxes as "district" taxes. A district's sales tax is applicable to sales occurring in that district unless the sale is otherwise exempt from the district sales tax. The exemption relevant to this discussion is the exemption for a sale of property which is shipped to a point outside the district pursuant to the contract of sale. (Rev. & Tax. Code § 7261(f).)

A district's use tax is applicable to the use of property purchased for use inside that district. (Rev. & Tax. Code § 7262.) If the sale is subject to one district's sales tax but the property is purchased for use in a second district, the purchaser is entitled to a credit against the second district's use tax for any district sales tax imposed by the first district. (Rev. & Tax. Code 7262(d).) My understanding of the facts about which you inquire is that the contract of sale requires delivery by common carrier to a specific district and the purchaser is not authorized to direct shipment of such property to a different district. Based on this understanding, the sale is exempt from the district tax in the origin district. The rate in effect in the destination district would be the correct rate of tax imposed on the transaction because the property is purchased for use in that district.

**Question 4:** "In a multistate transaction where forms and supplies are shipped from a vendor warehouse in your state to customer locations in another state, does your state tax the sale of forms and supplies? Please respond for a 'receipts' and 'withdrawal' customer. Assume the ultimate destination of the goods is **unknown** when the items are shipped to the vendor's warehouse and

there is no specific amount of time (days, months, years) indicated in the Agreement regarding how long a stock of forms and supplies can be maintained in the warehouse without being completely requisitioned."

**Answer:** The sale of tangible personal property occurs upon transfer of title to that property from the seller to the purchaser. (Rev. & Tax. Code § 6006.) The exemption relevant to this transaction is provided by Revenue and Taxation Code section 6396, discussed above in the answer to question 2. Under Uniform Commercial Code section 2401, a sale occurs when the seller completes its duties with respect to physical delivery of the property, unless the parties have an explicit written agreement passing title at a prior time. (See Reg. 1628(b)(3)(D).)

The vendor has an explicit written agreement to pass title upon full payment. Thus, if payment is made in full prior to delivery, title passes, and the sale occurs, at the time of full payment, in accordance with the contract provision. If the vendor completes its duties with respect to physical delivery (i.e., here, upon delivering the property to the common carrier for shipment to the customer) prior to receiving payment in full, title passes, and the sale occurs, at the time of delivery to the common carrier for shipment. Thus, it appears that the sale to a withdrawal customer would always occur at the time of delivery since that customer would not have made full payment for the purchase prior to that time. This means that at the time of sale the contract requires delivery out of state, and the property is, in fact, delivered out of state. Under such circumstances, the sale is exempt from sales tax under section 6396.

On the other hand, a receipts customer may pay in full prior to delivery. When it does so, the sale occurs at the time of payment. At the time of that sale, the contract would not require delivery outside California since the contract authorizes the customer to requisition its property for delivery either inside or outside California. Since the contract does not require delivery outside California, the exemption provided by section 6396 does not apply, and sales tax applies to such sales. In those circumstances where a receipts customer does not pay in full prior to delivery, the sale would occur at the time of delivery (as with a withdrawal customer). If the delivery were to a point outside California, at the time of that sale the contract would require delivery out of state. The sale would qualify for the exemption.

**Question 5:** "In an intrastate transaction, where forms and supplies are shipped from a vendor warehouse in your state to a customer location in your state, in what jurisdiction (county, city or otherwise) is the sale taxable, the origin location (warehouse) or destination location (customer location)?"

Please respond for a 'receipts' and 'withdrawal' customer. Assume the ultimate destination of the goods is **unknown** when the items are shipped to the vendor's warehouse and there is no specific amount of time (days, months, years) indicated in the Agreement regarding how long a stock of forms and supplies can be maintained in the warehouse without being completely requisitioned."

**Answer:** The analysis is similar to the analyses above in the answers to questions 3 and 4. The tax imposed in the destination district would apply, so the rate in that district would be the minimum rate applicable to the sale. The tax imposed by the origin district would also apply unless the sale qualified for the exemption provided by section 7261(f). It appears that sales to withdrawal customers would always qualify for the exemption, as would sales to receipts customers when the delivery was made before payment in full (i.e., the same type of sales to receipts customers that would qualify for the interstate commerce exemption if shipped outside California). Sales to receipts customers would not qualify for the exemption from the origin district's tax if the delivery is made after payment in full (i.e., the same type of sales to receipts customers that would not qualify for the interstate commerce exemption even if shipped outside California). Under such circumstances, the origin district's tax applies as does the destination district's tax, with a credit for the origin district's tax. This means that net tax rate applicable to such sales is the higher of the rate in the origin district or the rate in the destination district.

**Question 6:** "Are your responses to questions 2 and 3 different if a specific amount of time (days, months or years) is indicated in the agreement regarding how long a stock of forms and supplies can be maintained in the warehouse without being requisitioned?"

**Answer:** No.

**Question 7:** "Are your responses to questions 4 and 5 different if a specific amount of time (days, months or years) is indicated in the agreement regarding how long a stock of forms and supplies can be maintained in the warehouse without being requisitioned?"

**Answer:** No.

**Question 8:** "Generally, is your state a 'destination' state? That is are goods taxed where final delivery takes place regardless of where title passes?"

**Answer:** Retail sales of tangible personal property in California are subject to sales tax measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401.) Thus, when the vendor makes a sale inside California and that sale is not exempt (e.g., when it does not qualify for the exemption provided by section 6396 for sales of property required to be shipped, and shipped, outside California), sales tax applies. When the vendor makes a sale outside California to a person who purchases the property for use in California, use tax applies.

**Remaining questions:** Your remaining questions are whether tax applies to the following charges: storage of property in vendor's warehouse; handling of property; warehouse activities;

data entry for recordkeeping with respect to requisition forms; pick and pack (additional handling of breaking down cartons into smaller desired quantities for shipping); "desk top delivery" of property to specific customer location; freight-in for charges incurred by vendor for delivery to vendor's warehouse; freight-out for actual charges incurred by vendor for delivery of goods by common carrier to the customer; inventory carrying charge invoiced to withdrawal customers based on value of forms and supplies held for the customer; inactive inventory charge when customer has not requisitioned anything for a certain period of time; and excess inventory charges for maintaining property for a customer when the property has not been withdrawn after a certain period of time specified in the agreement.

**Answer:** The retail sale of tangible personal property in California is subject to sales tax measured by gross receipts unless the sale is specifically exempt by statute. (Rev. & Tax. Code § 6051.) If the sale is specifically exempt by statute, then the charges related to that sale are exempt. The remainder of this answer is based on the sale in question being a taxable retail sale. The taxable gross receipts from that sale include all amounts received by the vendor related to the sale of the tangible personal property, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012(a).) The taxable gross receipts include charges for services which are part of the sale of tangible personal property. (Rev. & Tax. Code § 6012(a)(2).) The retailer's costs related to the sale (such as freight costs for delivery to the retailer's location) cannot be deducted from the retailer's taxable gross receipts. (Rev. & Tax. Code § 6012(a) & (b).) The only exclusion relevant to the charges about which you inquire is for transportation to the purchaser. That exclusion is set forth in subdivision (c)(7) of Revenue and Taxation Code section 6012:

"Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser."

Thus, when delivery is by common carrier and is not for a delivered price, separately stated charges for that transportation directly to the purchaser are excluded from the measure of tax, but the exclusion cannot exceed that actual cost of delivery to the vendor. Your question 17 relates to charges in the amount of the actual freight charges incurred by the vendor for delivery of the property directly to the purchasers by common carrier. If those charges are separately stated and the sale is not for a delivered price, they are not subject to tax. If the charges for the transportation are grouped with any other charges, they cannot be excluded from tax.

Your question 15 is for "desk top delivery" which appears to be for delivery by the vendor's own facilities. If so, the charge is excludable from tax only if the charge is separately stated for

delivery occurring after the sale occurs (the exclusion cannot exceed a reasonable charge for the delivery). In the case of a withdrawal customer, it appears that the sale would always occur after delivery. (See Cal.U.C.C. § 2401, Reg. 1628(b)(3)(D), and discussion above in answer to your question 4.) Thus, charges for such delivery would be taxable, whether separately stated or grouped together with other charges. In the case of a receipts customer, it appears that the sale would sometimes occur before delivery (when payment in full is made prior to the delivery) and sometimes after delivery (when payment is not made prior to delivery). When the latter (sale occurs after delivery), the charges are taxable. When the former (the sale occurs prior to delivery), separately stated charges not exceeding a reasonable amount are not taxable; however, if the charges for the transportation are grouped with any other charges, they cannot be excluded from tax.

Except for the delivery charges meeting the requirements discussed in the two previous paragraphs, all the charges about which you inquire are subject to sales tax.

If you have further questions, feel free to write again.

Very truly yours,

Victor G. Matl  
Tax Counsel

VGM:cl

cc: Mr. Dennis Fox  
Out-of-State District Administrator