

**STATE BOARD OF EQUALIZATION**

(916) 445-6493

March 1, 1989

Ms. D--- S---
Bookkeeper
A--- C---
XXXX --- --- Blvd., Suite XXX
--- ---, CA XXXXX

A--- C--- – SR -- XX-XXXXXX
Engaged in business – collection of district use taxes

Dear Ms. S---:

In your January 12, 1989 letter to Mr. Herb Cohen, hearing officer, which was referred to me for response, you ask for us to verify that you are taxing your customers correctly. You write:

“Our gallery is located in [city]. We do some retail sales from the gallery, but the majority of sales are done on a consulting basis. We do business with companies in California and out of state.

“After speaking with you, it is our understanding that:

“1. If we ship, deliver or sell artwork to customers within our district, we charge 6.5% sales tax;

“2. If we ship, deliver or sell artwork to customers outside of our district within California, we charge 6% sales tax;

“3. If we ship, deliver or sell artwork to customers out of state, we do not charge sales tax.

“We also need to know if we do business with a large corporation and are shipping artwork to many different locations in and out of state, but we are billing all of the invoices to one corporate location, do we charge sales tax according to where the pieces are being delivered or where we are billing?”

Opinion

Your place of business is located within the Bay Area Rapid Transit (BART) district, which comprises the counties of San Francisco, Alameda, and Contra Costa. With respect to your sales of artwork to customers who take delivery of the artwork at your gallery or your shipments or deliveries to the customer's location anywhere in the BART district, the current applicable tax rate is 6 ½ percent, consisting of the statewide uniform rate of 6 percent plus the ½ percent BART district transactions and use tax rate.

On and after April 1, 1989, an additional district transactions and use tax of ½ percent will become effective in Contra Costa County, and will apply to your gallery sales and to your shipments or deliveries to customers located in Contra Costa County. Thus, the combined state, local and district rate will be 7 percent for these sales.

If you ship or deliver artwork to customers located outside of the BART district (San Francisco, Alameda, and Contra Costa Counties), but within California, you are liable for the statewide uniform sales tax rate of 6 percent. If your customer is located in a district (of districts) imposing a transactions and use tax, your customer is liable for that district's use tax. Whether you are responsible for collecting that district's use tax from your customers depends upon whether you are a retailer engaged in business in that district. The Board's Transactions and Use Tax Regulation 1827(c)(2) defines a retailer engaged in business in a district as including, among other things:

“(2) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in the district under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property.”

Under this definition, the Board would consider you as engaged in business in districts other than the BART district (and on and after April 1, 1989, the Contra Costa County district) if your representatives or agents consult with customers located in those districts with regard to your sales of artwork. If you are engaged in business in a district, Regulation 1827(b)(1) provides as follows:

“(1) DELIVERIES INTO THE DISTRICT. A retailer engaged in business in the district shall not be required to collect use tax from the purchaser of tangible personal property unless the retailer ships or delivers the property into the district or participates within the district in making the sale of the property, including, but not limited to soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the district or through any representative, agent, canvasser, solicitor, subsidiary or person in the district under authority of the retailer.”

For example, if your representative or agent consults with customers located in Los Angeles County regarding purchases of artwork, then you would be considered as engaged in business in that district and obligated to collect the additional ½ percent district tax applicable in Los Angeles County on all of your shipments or deliveries to customers in Los Angeles County, regardless of whether or not your representative or agent consulted with any particular customer located in that county regarding its artwork purchases.

The foregoing engaged in business provisions also apply to your shipments or deliveries to customers located in Alameda County. Your shipments or deliveries to Alameda customers are subject to sales tax at a 6 ½ percent rate, including BART district transactions (sales) tax, and you will also be required to collect from your customers the Alameda district use tax of ½ percent if you are engaged in business in that district.

If you ship or deliver property outside of this state, whether by your own facilities or common carrier, pursuant to a contract of sale between you and your customer which requires out-of-state shipment, then California sales tax will not apply to your shipments in interstate commerce. (Regulation 1620(a)(3)(B)(2)). You should retain bills of lading or other documentary evidence of your delivery to an out-of-state location in order to support the exemption for interstate shipments. (Regulation 1620(a)(3)(D)). However, if your customer is located out of state, but picks up the artwork sold at your location within California, then California sales tax, including BART district transactions tax, will apply to your sale even though your customer will immediately remove the property sold from the state.

With respect to your last question regarding your shipments of artwork to different locations of a corporation, the applicable tax rate is determined by the place of shipment or delivery rules outlined above, and not by the billing address for your invoices. For example, if you ship artwork to a customer's location within this state but outside of any district, the applicable tax rate is 6%, regardless of whether or not the customer's billing address is within a district. (Regulation 1823(1)).

I enclose for your information copies of Regulation 1620 and the Board's Pamphlet 44, District Taxes, which includes Regulations 1823 and 1827. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Tax Counsel

JA:jb
Enclosures