

Memorandum

To: Mr. REDACTED TEXT, Manager
Accounting Operations
State Department of Education
P. O. Box 944272
Sacramento, CA 94244-2720

Date: September 20, 1988

From: John Abbott, Tax Counsel
State Board of Equalization

Subject: State Department of Education – SV KH REDACTED TEXT
Collection of district taxes

The memorandum is in response to your July 12, 1988 letter to Mr. Jack Najarian, District Administrator for the Board's Sacramento District office, which Mr. Najarian forwarded to the Board's legal staff for response. You have reviewed the Board's Pamphlet 44, Transit Taxes, and you believe it is inappropriate for the Department of Education collect transit taxes since the Department does not have any business location, office, distribution place, or storage or sales rooms in any city other than Sacramento. You maintain that you are engaged in business only in Sacramento and that all sales take place in Sacramento even though the Department mails goods to other districts as a convenience to your customers there. You ask us to provide you a written opinion confirming or denying your interpretation of this issue.

Opinion

Your interpretation of the requirements for collecting the district transactions and use taxes within the special districts throughout the state would be correct if the Department of Education were a separate legal entity. However, our opinion is that the Department is not a separate entity, but is an agency of the State of California, and the State of California is a retailer engaged in business in districts throughout the state in which state offices are located. We can find no basis for treating different state agencies as different entities for sales and use tax purposes. To the contrary, Revenue and Taxation Code Section 6005 defines a "person" subject to the Sales and Use Tax Law to include "this State."

By this same analysis, the state is also a single entity for sales and use tax purposes when (for example) the Department of General Services purchases tangible property and transfers the property purchased to another state agency. If these agencies were different legal entities, the Department of General Services would be required to report and pay sales tax on these transactions. It has been the Board's longstanding interpretation that such transactions are not sales when the transfer of tangible property occurs between two state agencies. Likewise, our view is that the state is a single entity for purposes of determining whether the State of California is a retailer

engaged in business in a particular district. The Department of Education should collect the applicable district use tax when it mails the goods sold to a customer located in a district.

JA:jb

bc: Mr. Jack Najarian - Sacramento District Administrator
Mr. Lawrence D. Micheli - Local Tax
Mr. Donald Hennessy
Mr. Robert Stipe