



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
 (PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
 TELEPHONE: (916) 324-2614
 FAX : (916) 323-3387

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March 27, 1997

Ms. [B]
 Sales Tax Accountant
 [D]
 XXXX --- ---
 --- ---, -- XXXXX

Re: [D]
 Account No. S- -- XX XXXXXX

Dear Ms. [B]:

This is in response to your letter dated January 27, 1997, regarding the application of tax to the sale of labels by [D] to [A]. You state:

“[D] is registered to collect sales/use tax within California. We also have sales offices, and warehousing locations within your state. [D] is in the business of manufacturing computer paper, cards, labels, business forms, etc. We have no manufacturing locations in California.

“We are selling labels to [A]. [A] is licensed as an insurance company in the State of California.

“The problem arises when [A] contacts our [in-state] sales office to order labels. A [D] employee takes the order and arranges for the manufacture and delivery of these labels. The labels are manufactured at our [out-of-state] location and then shipped to [A] in California.”

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Although the retailer owes the sales tax, the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

However, insurance companies doing business in this state are liable for an annual tax imposed by California Constitution Article XIII, Section 28, in lieu of all other taxes and licenses upon such insurers and their property, with certain exceptions not applicable herein. (See Rev. & Tax Code § 12102.) Thus, if the applicable tax in the present case is the use tax, [A]'s use of the labels would be exempt from tax because the use tax is imposed on the purchaser. (Reg. 1567(b).) On the other hand, if the applicable tax is the sales tax, the sale to [A] would not be exempt from tax because the sales tax is imposed on the retailer and not the purchaser. (*Id.*)

Sales and Use Tax Regulation 1620(a)(1) provides that if title to the property sold passes to the purchaser at a point outside this state, sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transaction. If the contract of sale is silent as to the passage of title, title passes from the seller, and thus the sale occurs, no later than the time at which the seller completes its performance with respect to the physical delivery of the property. (See Cal. U. Com. Code § 2401; Reg. 1628(b)(3)(D).) This generally occurs upon the seller's delivery of the property to a common carrier for shipment to the customer. (*Id.*)

In the present case, our understanding is that [A] orders the labels from [D]'s [in-state] sales office. The labels are then manufactured and delivered from an out-of-state location via common carrier to [A]. We further assume that the contract of sale is silent as to the passage of title. Under these circumstances, title to the labels passes to [A] outside of California at the time and place [D] delivers the labels to a common carrier for shipment to [A]. Accordingly, because the sale takes place outside of California, the use tax, rather than the sales tax, applies. Therefore, assuming that [A] is an insurance company doing business in this state, [A]'s use of the labels in California is exempt from use tax.

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung
Tax Counsel

SHC:rz

cc: Out-of-State District Administrator (OH)