

# Memorandum

**710.0013**

To: Ms. Victoria L. Arena

Date: July 18, 1991

From: John L. Waid

Subject: Uniform Local Tax Annotations

Section 710.000 – Place of Sale for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes – Regulation 1802.

The attached letter contains five principles which appear to be appropriate subjects for annotation in the above section:

- (1) A field office may be determined to be the place of sale notwithstanding the fact that another office has final approval and/or price discount authority;
- (2) In all but exceptional cases, a field sales office out of which salesmen work in contacting customers, making presentations, and soliciting orders for the work involved is the place of “principal negotiations”.
- (3) A field sales office must be established by the retailer to serve its own needs, rather than established at the instance of a particular customer to serve that customer’s needs; and
- (4) A field office established on a customer’s premises to administer a previously negotiated sales contract between retailer and that customer is not a “place of sale” for Bradley-Burns purposes even if sales to that customer are made directly out of that office; and
- (5) For a field sales office to be considered as a “place of sale” for Bradley-Burns purposes, the retailer must have a proprietary interest in the office space.

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Attach.

July 10, 1991

John L. Waid  
Tax Counsel

Mr. John Abbott has asked me to respond to your memorandum of June 27, 1991, to him regarding the taxpayer's local tax allocation. An allegation has been made that the taxpayer should be allocating local tax to its field office located at the plant located in rather than to the main office.

You requested that we look at your proposed draft response to on this matter and make whatever suggestions, comments, etc., we felt necessary to address these consultants' claims that office should have its own permit. I have taken the liberty of re-drafting your letter to emphasize our position that, while tax should be allocated to the local office as a rule, it can only be so allocated if (1) the retailer exercises some dominion and control over the local office space and (2), sales are made as a result of the salesman's activities at that office rather than of a previously negotiated sales contract administered through the forward location. We feel that the latter situation applies here.

Please send me a copy of whatever you do sent out.

JLW:es  
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property is delivered out of state. If a retailer has more than one place of business in this state which participates in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If that is where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, credit approval, shipment or billing. (Reg. 1802(a)(2). Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.)

In our opinion, the term "principal negotiations" as used in the above regulation does not mean the final approval by the headquarters office to enter into the contract, nor does it refer to the authority of the headquarters office to finally negotiate the price offered or accepted. Rather, our opinion is that when the principal point of contact between the seller and its prospective customers is through the sales personnel located in or working out of a branch sales office, the place of sale for Bradley-Burns tax purposes is that sales office, notwithstanding that the headquarters office has final approval and price discount authority. In all but exceptional cases, a field sales office out of which salesmen work in contacting customers, making presentations, and soliciting orders for the work involved is the place of "principal negotiations."

All that having been said, however, in order for local tax to be allocated to a field office, the sale not only must be made at that location, but it must also be made by an employee of the retailer as a result of his activities at that location. In this case, as you indicate, \_\_\_\_\_ is such a large customer of \_\_\_\_\_ that \_\_\_\_\_ operates a full-time sales office at the \_\_\_\_\_ site. Although \_\_\_\_\_ may be physically located on site at \_\_\_\_\_ facilities, he is a contract coordinator who reports to and is supervised by \_\_\_\_\_ personnel in \_\_\_\_\_ The purpose of using \_\_\_\_\_ facilities is to have a person available on site who knows \_\_\_\_\_ needs and to readily ensure that their product needs are met.

More important, \_\_\_\_\_ does not own, lease, manage or maintain \_\_\_\_\_ office space. He merely occupies a space furnished by \_\_\_\_\_ to fill \_\_\_\_\_ orders and address \_\_\_\_\_ specific equipment needs. He likely carries out his activities and is required to occupy the office pursuant to a supply contract previously negotiated between \_\_\_\_\_ and \_\_\_\_\_ "office" then is nothing more than a forward operating location from which he administers a previously-established business relationship. The sales made, including the daily bench stock sales, are more properly attributable to that relationship rather than \_\_\_\_\_ on-site activities.

-3- July 17, 1991

The Board has no desire to deprive \_\_\_\_\_ County of any local tax revenue to which it is entitled. However, local tax is allocable to the place of business of the retailer not the purchaser. It is our conclusion that the office facilities of \_\_\_\_\_ furnished as a convenience by \_\_\_\_\_ to serve its own needs do not qualify as a place of business of \_\_\_\_\_

Sincerely,

L. D. Micheli  
Supervisor  
Local Tax Section

LDM:lv

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bc: John L. Waid