

## **805.0000 COLLECTION OF TAX BY RETAILERS—Regulation 1827**

**805.0010 Alameda Tax.** Sales by an Oakland retailer, having no physical presence outside of Oakland, to Alameda County residents or residents of other counties who pick up their purchases at the Oakland place of business are subject to state sales tax, uniform local sales tax, BART tax, and ACTA tax for a combined rate of 8.25%. Sales to residents of other counties requiring that their purchases be shipped to them, generally are not subject to BART or ACTA tax. However, if the other county is either San Francisco or Contra Costa, the BART sales tax applies but not the ACTA sales tax. If the other county has a countywide district tax, the purchaser is liable for the district use tax at the rate in effect in that district. If the retailer has agents, representatives or employees who solicit sales, take orders or make deliveries in such counties, the retailer must collect the district use tax for which the customer is liable and remit it to the state. 10/8/92.

**805.0040 Collection of District Taxes.** An out of state retailer that maintains a sales office in Los Angeles also conducts seminars in other locations throughout this state at which it displays its products. All merchandise is shipped from an out-of-state location. The retailer is required to collect and remit district use tax on all sales delivered into any county in which it has an office or it regularly conducts seminars if that county has a district use tax. 1/9/90.

**805.0042 Collection of District Use Tax.** A taxpayer is a software company with offices only in one county but which sells its software throughout California. All sales are made from its offices located in the one county. However, the taxpayer's representatives go to the clients' offices to install the software and, thus, the taxpayer is engaged in business in any district in which its customers are located (Regulation 1827(c)(2)). Accordingly, the taxpayer properly collects the appropriate district use tax on the sale of the software itself. Software upgrades are, however, distributed to the clients by mail or UPS, without any subsequent visits by the taxpayer's personnel. Since it ships the upgrades to its customers in districts in which it is engaged in business, the taxpayer must also collect district use tax on the sales of the upgrades (Regulation 1827(b)(1)). 4/23/96.

**805.0043 Collection of District Use Tax.** A retailer engaged in business in a district is required to collect district use tax on sales made to customers in that district if the retailer ships or delivers the property into the district, or participates within the district in making the sale by means of having within the district any agent, representative, or any person acting under the retailer's authority. It is immaterial that the customer to whom the property was shipped may not have been contacted by the retailer's representative in the district. 3/1/89.

**805.0045 Collection of District Use Tax—Vehicles.** Contrary to the general rule stated in other sections of Regulation 1827, subdivision (c)(4) defines a retailer of a vehicle as "engaged in business in the district." The application of this section requires the vehicle dealer to collect and remit the district use tax of the district in which the vehicle is registered, even if the dealer has no physical representation in that district and has not delivered the vehicle into that district. 3/30/94.

**805.0050 Deliveries of Vehicles to State Agencies.** The place of delivery of state vehicles is considered the place of use, and the district use tax will apply where the delivery to the state agency is made in a district. (Regulation 1823(b).) Thus, the vehicle dealer is responsible for collecting the district use tax when a vehicle is delivered in a special district in which it is "engaged in business." (Regulation 1827(b)(3).) 7/20/88.

**805.0100 Installation of Mobile Home.** A contract to furnish and install a mobile home is a construction contract. A construction contractor who installs a mobile home in a special tax district is regarded as being engaged in business in that district. The contractor is required to report the district tax applicable to that district. 11/18/93.

**805.0125 Mail Order Company.** A mail order company which sends catalogs to prospective customers by mail and then ships the ordered goods via UPS to residents in other counties in California is not considered as being engaged in business in districts other than the district in which the place of business is

located. Therefore, the mail order company is not required to collect district use tax owed by its customers for merchandise purchased from the mail order company. 5/30/89.

**805.0130 Mobile Home Dealers.** Mobile home dealers are retailers with regards to local and district taxes. By making regular deliveries into purchasers' districts, the dealers are engaged in business in those districts pursuant to Regulation 1827. Thus, dealers are required to collect district use taxes when they deliver and/or install mobilehomes into counties with a district tax. 4/12/93.

**805.0140 Nationwide Catalog Sales.** Taxpayer sells career educational materials nationwide through catalog sales. It has only one office which is located in a California county not having a countywide taxing district. Also, it does not have outside sales people that work outside the office. All orders are shipped from the office location via UPS or U.S. Mail.

Since taxpayer does not have an outside sales staff and is located in a county not having a taxing district, it is not required to collect district use taxes. However, purchasers residing in taxing districts are required to pay their district use taxes. 3/10/92.

**805.0155 Reimbursement for Transaction Tax.** A direct mail marketing company is required to report and pay the district transactions (sales) tax to the Board on its sales of property to purchasers within the county in which the company is engaged in business. Since the district transactions tax, just like the state sales tax, is imposed on the seller, not the purchaser, the company is not required to collect reimbursement for district transactions tax from its customers. Whether tax reimbursement is obtained for the sales tax and the transactions tax is a matter of contract between the sellers and the purchaser. 4/24/89.

**805.0166 Sales with In-State Participation.** An out-of-state retailer makes sales into California with all sales shipped FOB the out-of-state point. The retailer has an in-state independent sales representative, who solicits orders and forwards them to the out-of-state retailer. This creates sufficient nexus to require the retailer to collect state and local use tax from its California consumer customers on the sales solicited by the in-state representative and on the sales made directly from the out-of-state location without in-state participation.

With respect to the collection of district use tax, the retailer has a duty only with respect to those sales made in counties having county-wide taxing districts in which the in-state representative has a physical presence. Physical presence includes temporary presence resulting from sales trips into counties other than the county in which the representative's office is located. 10/8/92.

**805.0167 San Diego County District Use Tax Credit.** Although the tax rate in effect in San Diego County continues to be 7.75%, an eligible taxpayer (which includes a retailer collecting district use tax) may claim a credit of 0.75% against its tax liability for an effective rate of 7.00%. (Section 7276(a).) The credit may be taken until the Board notifies taxpayers that the credit is terminated. (Section 6276(d).) Thus, for contracts in effect at the time the tax credit became operative, taxpayers should have ceased to collect sales tax reimbursement or use tax at the full rate and only collect 7.00%. It would be appropriate for contracts currently being negotiated to provide for a full tax rate 7.75% but also that only 7.00% will be collected from the customer until the credit is ended and the full rate after that time. 6/30/95.

**805.0168 Sold in a District.** A retailer located in a county having a county-wide district tax is liable for the transaction (sales) tax on all taxable sales made and delivered at the place of business at the rate in effect in that district, regardless of whether the purchaser is from that county or another county. Sales shipped to purchasers in the county in which the retailer is located are subject to district sales tax at the district rate.

Sales shipped to customers outside of the retailer's county are not subject to the district sales tax, but are subject to any district use tax in the destination county. If the retailer is "engaged in business" in the county in which the customer is located and that county has a district tax, the retailer is required to collect the use tax from the customer and remit it to the state. Briefly, "engaged in business" means having a

place of business in a county, or a representative or agent or employee operating there for the purpose of selling, delivering, or taking orders. 10/8/92.

**805.0175 State Department of Education.** The State Department of Education is not a separate entity, but is an agency of the State of California. Therefore, the Department of Education is a retailer engaged in business in districts throughout the state in which state offices are located. Therefore, it is required to collect district use taxes in all counties. 9/20/88.

**805.0200 Traveling Salesman.** A machinery manufacturer, headquartered out-of-state, manufactures large custom machines and replacement parts in Santa Rosa. The machines and parts are shipped via common carrier to all counties in California and outside of California. The company has a salesman, operating out of Santa Rosa, traveling throughout his sales area lining up customers and handling the California activities.

Santa Rosa is in Sonoma County. Sales in Sonoma County are subject to the Sonoma County transaction tax. The company is also “engaged in business” in the counties in which the salesman operates and is required to collect their district use tax, if any. 4/21/92.

**805.0240 Use Tax Collection Liability.** A taxpayer is located in a county which does not have a special tax district. The taxpayer employs a salesperson who works out of his or her home in a county which does have a special tax district. All orders are F.O.B. the taxpayer’s location. The sales are regarded as taking place in the county of the taxpayer’s location. The taxpayer is required to collect special district use tax on sales to residents in the county in which its employee resides. The taxpayer is not required to collect special district use tax on sales to residents in other counties having special tax districts. 7/24/91.

**805.0300 Single Delivery into a Tax District.** The making of a single delivery into a tax district will not in itself cause a taxpayer to be regarded as engaged in business in that district. The taxpayer is not required to collect district use tax on its sales to customers in that district based on isolated deliveries. 8/31/94.

**805.1000 University of California.** The University of California is an “instrumentality of the state” or a “constitutional department or function of state government,” or a “statewide administrative agency.” As such, it appears that the University of California is present in all areas of the state and for that reason is required to collect use tax in all of the transit districts. 12/20/82.

**805.1010 Warehouse Sales.** A taxpayer requested advice as to the proper tax rate on its sale to a customer in Sacramento County. The product is manufactured and warehoused at a facility in San Mateo County. The customer is invoiced and takes title to the product when it is placed in the warehouse. The product is then delivered to the customer, at their request, in one or more shipments, to Sacramento County. Although the customer takes title to the product in San Mateo County, the taxpayer contracts to ship the product to Sacramento County. The San Mateo district transactions tax does not apply to these transactions. However, the customer does owe the Sacramento countywide district use tax. If this taxpayer is “engaged in business” in Sacramento County, it is also required to collect the Sacramento countywide district use tax on these sales. 8/20/91. (Am. 2002–2).