

115.0000 AUCTIONEERS—Regulation 1565

*United States, auctioneers employed by, see also United States, Sales by—
“Surplus Property.”*

115.0010 Auction Sales—Buyer’s Premium. A seller consigns goods for sale at auction, after agreeing to pay the auctioneer a certain percentage of the sale price. The auctioneer also announces to the buying audience that a 10% buyer’s premium will be added to the purchase (bid) price, which will be retained by the auctioneer. If a person is the successful buyer of an item for a bid of \$100, the buyer will pay to the auctioneer \$110. The gross receipts from the sale include the buyer’s premium. Tax applies to the entire \$110 paid by the buyer to the auctioneer. 3/16/88.

115.0012 Auctioneer’s Place of Sale. An auctioneer is not required to obtain a separate subpermit for all auction locations at which it will be making sales for temporary periods of less than thirty days. The local tax on the auctioneer’s sale are, therefore, placed in countywide unallocated pool for the county in which the auction is held. 4/30/91.

(Note: Statutory changes to Regulation 1802, effective July 1, 1996.)

115.0015 Collection of Use Tax. An out-of-state auctioneer who is engaged in business in California, is required to collect the use tax when it holds auctions outside the state and undertakes to ship the goods to the purchaser in California. 1/27/87.

115.0020 Furnished Houses. Real estate auctioneers selling furnished houses are retailers of the personal property contained therein. They must secure sellers’ permits and pay tax on the selling price of the personal property included with the house. If a lump-sum charge is made, the tax must be paid on the fair retail value of the personal property. 1/25/65.

115.0025 Internet Auctioneer. A California firm advertises on its website, which it administers from its California location, that it is bonded as an auctioneer in California and states in its contracts with the owners of tangible personal property that it is in the business of selling equipment at auction. The firm advertises and holds itself out as a person available to engage in the asking for, recognition of, and acceptance of offers to purchase equipment at an online auction. The auction is conducted by computer-generated exchanges between the firm and its audience, consisting of a two-week preview period in which a picture and/or description of available equipment is displayed on the firm’s Web site, followed by a three-day bid period during which the three top bids are continuously displayed on the Web site and any interested viewer may bid above the preceding highest bid. At the end of three days, the highest bid is accepted. Under its contracts with the owner and buyer of the equipment, the firm has both the power to bind the owner and buyer of the property to the sale, and the power to transfer title to the property.

The firm is an auctioneer and, thus, a retailer of equipment sold by it at auction on the Internet. The firm must report sales tax from the retail sales of property shipped from a California location of the owner of the equipment to a California location of the buyer of the equipment. Since the firm maintains an office in this state, it is a retailer engaged in business in California. As such, the firm must collect and remit the use tax from California purchasers who make retail

purchases of items shipped from the out-of-state location of the owner to California. 11/26/97. (M99-2).

115.0040 Out-of-State Auctioneer—Collection of Use Tax. An auctioneer's principal place of business is in New York. The auctioneer is considering opening an office in California, staffing it with employees who may:

Contact California residents who may be prospective sellers of art objects, and invite them to include such objects in auction sales. Contact California residents who may be prospective buyers of art objects at the auctioneer's New York auction sales, and notify them of the time and place such objects will be available for inspection. Information regarding such object may also be provided, upon request.

Make appraisals of art objects for insurance or probate purposes. These objects would not be sold at auction by auctioneer.

Property sold by the auctioneer to a California resident would be delivered by the auctioneer to the resident at the place of auction or to a common carrier selected by the resident. Under these circumstances, some residents might not bring property they had purchased from the auctioneer to California.

If the auctioneer opens an office in California and if its employees solicit or take orders for art objects, it will be a retailer engaged in business in this state and it will be required to collect California use tax on its sales of property purchased for storage, use, or other consumption in California which occur at its auction conducted outside California to the extent the property sold is delivered within California.

On the other hand, the auctioneer will not be required to collect California use tax on its sales of property purchased for storage, use or other consumption in California which occurs at its auction conducted outside California where the property purchased is delivered to residents at the place of auction or to a common carrier selected by residents where the auctioneer is not required by the (auction) contract of sale to provide for delivery in California, or delivery to California residents is at points outside of California. 3/25/70.

115.0050 Out-of-State Sales. At the time of sale, the auctioneer did not have proof of a condition or requirement to ship or deliver the property to an out-of-state location. In instances where the auctioneer has a bill of lading showing the property was shipped from the auction site, or other place where the auctioneer had control of the property, directly to an out-of-state point by common contract carrier, the documents (bill of lading) confirming the out-of-state shipment will be accepted as evidence of meeting the "pursuant to the contract of sale" requirement of Regulation 1620(a)(3)(B). 6/8/88; 5/20/96.

115.0060 Partner Buys Back. A partnership sold several horses through an auctioneer. The horses were purchased by one of the partners who had a one third interest in the partnership.

In this case, the partnership owned the horses which were sold at auction, and assigned the right to sell them to the auctioneer. An individual purchased the horses which had previously belonged to the partnership. Therefore, there was a change of ownership, and sales tax is owed on the entire sales price, not on just two thirds. 1/7/94.

115.0090 **Vehicle Not Requiring Registration.** Sales by auctioneers of vehicles that are not required to be registered under the Vehicle Code, i.e., to servicemen who will register them in their home state or to out-of-state residents who will remove the vehicles on one-way trip permits are subject to sales tax notwithstanding the fact that the auctioneer is not a registered dealer, manufacturer, or dismantler. 12/23/71.