

## **710.0000 PLACE OF SALE FOR PURPOSES OF BRADLEY-BURNS UNIFORM LOCAL SALES AND USE TAXES—Regulation 1802**

**710.0002 Place of Sale—Agents.** A taxpayer sells its products through distributors who are not the taxpayer's employees. These distributors may or may not handle other product lines. The taxpayer is not a 6015 retailer. The distributors call on existing and prospective customers, take orders for the products, and forward the orders to the taxpayer's manufacturing facility located in California. Customers may send a few orders directly to the factory, but the distributors still get commissions on these sales. The distributor may negotiate prices with the customer. Both the distributors and the taxpayer advertise the products. The taxpayer handles all billing and collections. The distributors are true agents and are not buying and selling on their own account.

Under Regulation 1699(e), a permit is not required for each agent who makes sales on behalf of a principal if the principal obtains a permit for each of its places of business in California. Therefore, in this case, the local tax should be allocated to place of business of the taxpayer (principal) since it has a permit for the California location.

In situations where agents are involved, Regulation 1699(e) is controlling rather than Regulation 1802(a)(2) which states that an employees activities will be attributed to the place of business out of which he or she works. Regulation 1802(a)(2) specifically refers to "employees." When compared to Regulation 1699(e), it is clear that allocation of local tax revenues on sales by independent agents must be treated differently. 10/17/95.

**710.0003 Place of Sale—Auctioneers.** An auctioneer's place of sale is deemed to be the place where the auction takes place, Regulation 1802(b)(4). The Board has interpreted "place" to mean county in the context of retailers such as construction contractors and auctioneers. It is reasonable for the Board to decide that when an auctioneer holds a sale at a particular location for a period of less than thirty days, such sales locations are so temporary in nature as not to justify imposing upon such auctioneers the burdens associated with requiring them to obtain Subpermits for those locations.

The practice of allocating the local tax revenues from temporary locations to the countywide pool was validated by the court in *City of San Joaquin v. State Board of Equalization* (1970) 9 Cal.App.3d 365 (88 Cal.Rptr.12). The board is not required to change this policy merely because the auctioneer has held auctions at the same location for several years or that substantial amounts of revenue are generated as a result of these auctions. An allocation that is reasonable otherwise is not rendered invalid because a particular case does not fall precisely within its parameters.

The revenues from the temporary location are allocated to the pool of the county. The jurisdiction in which the temporary auction takes place shares in the revenue based on its proportion of sales within the county to total sales. Accordingly, the jurisdiction cannot show it has lost revenue. Nor can it show that this rule is unreasonable in its overall application, even assuming it could show hardship in its own case. 9/9/91.

**710.0004 Place of Sale—Lease of Vehicle.** A lessor, whose home office is located out of state, negotiated a lease of a vehicle to a California customer from its home office. The vehicle was purchased directly from an automobile manufacturer at an out-of-state factory. Once the vehicle was manufactured, it was delivered to a dealer in California where the customer picked it up. The lessor, however, took title to the vehicle at the factory. The customer made lease payments at the lessor's home office.

Since the lessor is not a California new car dealer, and the car was purchased at an out-of-state factory where it took title, subdivision (a)(2) of section 7205.1 applies. The California dealer did not acquire title and the car was never a part of its resale inventory. Here, the transaction was completed out of state. The dealer basically provided temporary parking for the car coming into California. Thus, the lessor should report the local use tax to the county wide pool of lessee's residence. 2/9/96.

**710.0005 Bid Process.** A taxpayer is in the business of supplying materials to large utilities. It maintains a plant and a Customer Service Center ("CSC") in one county and an office in another county for its

account managers. The account managers are engineers who work with the utilities to determine their needs, i.e., specifications, materials, etc. If taxpayer makes products that fit the utility's needs, taxpayer is placed on utility's list of approved sources.

If the utility decides to make a purchase, it sends out a request for bid ("RFB") to its approved sources which includes the taxpayer's CSC office. Taxpayer's CSC office renders the quote back to the utility. If taxpayer gets the contract it is let through taxpayer's CSC office. The account managers maintain customer contact during the process, but have no pricing authority or power to make changes in the bid.

Since the actual sale is made through the bid process, the office that makes the bid is the place of sale for local tax purposes. (Regulation 1802 (a)(2).) 12/18/92.

[710.0007](#) **"Boiler Rooms"**. "Boiler rooms" are typically rental spaces holding desks and telephones where salesmen call potential customers and attempt to make sales. Such places may be relatively permanent locations or may move frequently. The customer's contact is solely with the person making the call. Local tax revenues derived from sales are allocated to the location of the boiler rooms in accordance with Regulation 1802 (a)(2). 5/19/92.

[710.0009](#) **Branch Sales Office**. A company's headquarters, including the tax department, is located out-of-state. The manufacturing plant is located in the Los Angeles area. The Division operating the plant has moved twice since 1978. Sales and service offices are located in various cities in California. Because of the expensive nature of the products, a finished goods inventory is not maintained. No order is regarded as accepted by the company until it is accepted by the Divisions marketing personnel presently located in City A. The company's field salespeople engage in the standard activities normally associated with salespeople; such as presentations, and discussions regarding product specifications, features, benefits, prices, and other terms and conditions of sale.

When the principal point of contact between the seller and prospective customers is through the sales personnel located in or working out of a branch sales office, the place of sale for local tax allocation is that sales office even if the headquarters office has final approval and discount authority. In all but exceptional cases, a field sales office out of which the salesmen work in contacting customers, making presentations, and soliciting orders for the work involved is the place of "principal negotiations." The sales offices are required to hold seller's permits, and the company must allocate the local taxes to those field offices and not to its headquarters office. 7/10/91.

[710.0010.250](#) **Card Lock Fuel Systems**. Corporation A has over 100 member companies that operate card lock fuel stations. Each member issues cards to its customers which can be used at any other member's station. Each member bills for deliveries made to its customers at its station and for deliveries made to its customers at other stations. A member does not bill for deliveries made from its station to another member's customers.

The place of sale for Bradley-Burns local tax purposes is the place where the member negotiates with its customer, regardless of the fact that the actual delivery takes place in another jurisdiction. 9/28/90.

[710.0011](#) **Check Printing Charges—Allocation**. Under certain specific conditions, a bank can avoid being the retailer of checks sold to its depositors. When those conditions have been met, the check printer is the retailer and the local tax should be allocated to the taxing jurisdiction in which the printer is located. If the printer does not have a place of business in California, the local tax should be allocated to the county into which the checks are shipped. If the bank is the retailer, the local tax should be allocated to the jurisdiction in which the bank's branch at which the checks have been ordered is located. 12/3/80; 5/20/96.

[710.0011.500](#) **Delivery from In-State Warehouse**. Where the retailer ships the property sold from out of state to its warehouse located in California for assembly or consolidation of the property sold, and that warehouse location is the point from which the shipment is made to the customer, sales tax is the applicable tax. The local portion of the sales tax is allocated in accordance with Regulation 1802, sections (a) or (b)(5). Sales tax is applicable because the sale was completed in California by the retailer's shipment to the

customer from a California location, and there was also participation by a place of business of the retailer, specifically its warehouse, in completing the delivery. The place of sale as defined in section 6010.5 is not the retailer's out-of-state location if the retailer does not complete its obligation with respect to delivery without first sending the property to its California warehouse. 8/11/89.

**710.0012 Field Sales Office.** The term "principal negotiations" does not mean the final approval by the headquarters office to enter into the contract nor does it refer to authority of the headquarters office to finally negotiate the price offered or accepted. It is the point at which the principal contact between the customer and the seller takes place. In all but exceptional cases, it is the field office out of which the sales personnel work on contacting the customers, making presentations, and soliciting orders. 12/28/90.

**710.0013 Formulas.** The following formulas are applicable in determining "a place of sale" for local tax purposes:

- (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 an office established at the insistence of a particular customer to serve the customer's needs.
- (4) A field office established on a customer's premises to administer a previously negotiated 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.
- (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. 7/18/91.

**710.0013.600 Internet Transactions.** Orders placed through a retailer's web site are received by the retailer's employees located in the City of Hayward. A web site is essentially an electronic forwarding agent from which orders are sent on to the retailer. Under Regulation 1699(a), the place of sale for local sales tax purposes for orders placed on the Internet would be the jurisdiction where the employee who receives the order is located. Thus, the place of sale for these transactions would be the City of Hayward. The location of the web server is immaterial. 12/30/97. (M99-2).

**710.0013.800 Leases.** Property leased for a long term at a fixed location for a material amount is subject to the Bradley-Burns tax in the county in which the property is located. The lessor is required to collect the tax and allocate to the county of use. It is immaterial that the lessor is not otherwise "engaged in business" in the county. 5/19/92.

**710.0014 Local Tax Allocation—Auctioneers.** An auctioneer conducting two auctions a year at the same location, which is not his permanent place of business, is not required to hold a sub-permit for that location, unless the auction extends for at least 30 days. The local tax must be allocated on a county-wide basis to the county in which the auction occurred. There is no justification or authorization for considering a temporary auction site to be a "place of business," or for allocating the local tax to the city in which a twice a year auction takes place. 4/30/90.

**710.0015 Newspaper Subscription Renewals.** Newspaper subscription renewals are new contracts, the local tax revenues should be allocated to the location from which the renewal notices were sent. 5/19/92.

**710.0016 Local Tax Allocation—Catalog Phone Orders.** Goods ordered from the taxpayer's catalog by telephone are shipped from the taxpayer's warehouse to its retail location nearest to the customer based on the customer's zip code. The customer is notified by the store that the goods have arrived. After inspecting the goods and rejecting or accepting them, the customer pays for the orders accepted. Inasmuch as the

telephone operators that accept the orders do not participate in any negotiations, and the placing of the order is not the sole contact the customer has with the retailer, the local tax must be allocated to the place at which the sale takes place, which under these conditions is the retail store where the customer takes possession of the merchandise. 12/15/94.

**710.0019 Out-of-State Retailer-Shipment into California.** Taxpayer is a retailer with several offices in California, one of which is in Orange County. The sales at issue were negotiated at or with the participation of the Orange County sales office. The goods were shipped from the taxpayer's out-of-state inventory. Under the sales agreement, "all deliveries are F.O.B. Destination." There was no title clause in the sales agreement.

Local tax follows the state tax. If the sales at issue are subject to state sales tax, they are subject to local sales tax. If subject to state use tax, then local use tax applies. Under Regulation 1620, sales tax applies since there is participation in the sale by a local office and the sale occurs in this state. Since there was no agreement as to when title passes and the property was shipped "F.O.B. Destination," title to the property passes at the time and place when the seller completes its performance with respect to physical delivery of the product.

Accordingly, the proper tax to be applied to such sales in which a local office participates and the sale occurs in this state (title passes in California) is the sales tax. Therefore, the local sales tax revenue derived from these sales should be allocated to the location where the Orange County office is located. 3/23/95.

**710.0020 Out-of-State Retailer—Warehouse Stock.** For the purposes of the state-administered local sales and use tax, where an out-of-state retailer has no office in California but maintains a warehouse stock in California, the warehouse is regarded as the place of sale as to all items shipped from the warehouse. It is immaterial whether the warehouse is operated by the retailer or is a public warehouse. 11/12/59.

**710.0022 Pickup Truck—Section 7205.1.** Although pick up trucks are mobile transportation equipment for the purpose of determining the application of tax, for the purposes of allocating the 1% local use tax under section 7205.1, those weighing less than one ton are treated the same as passenger vehicles. 1/11/96.

**710.0024 Place of Business.** Local tax is allocated to the taxing jurisdiction in which the retailer's place of business is located. To constitute a "place of business," the retailer's location must be a permanent office, must have a seller's permit issued to that address, and must have personnel negotiating sales assigned there on a permanent basis. Local tax will be allocated to this location only if it is a genuine business location and not a sham location. 8/5/83.

**710.0028 Place of Use—Lease of Vehicle.** A lessor is licensed by the DMV as a vehicle lessor. The lessor is not licensed by the DMV as a new car dealer. The lessor negotiates with a customer the car to be leased and the price to be paid at the lessor's place of business. The lease contract as executed is complete except for the VIN of the specific car. The lessor obtains the auto it will lease by purchasing it from a new car dealer ex-tax for resale. The car is then registered in the customer's name with the lessor retaining legal title. Since the lessor is not a new car dealer, the local use tax is properly allocated under section 7205.1(a)(1) to the location of the new car dealer from which the car is obtained. 9/17/96.

**710.0030 Sale Negotiated at Out-of-State Location of Retailer.** Fuel was sold to an airline common carrier pursuant to a contract negotiated at the retailer's out-of-state office. Under Regulation 1802 if a retailer has more than one place of business in this state, the place of sale for local tax purposes is the retailer's place of business in this state where the principal negotiations take place. This is the place where the order for delivery of the fuel was taken and the fuel was delivered to the airline common carrier. 4/13/77. (Am. 2004-2).

(Note: For retail sales of jet fuel sold on or after January 1, 1999, AB 66 (Stats. 1998), Revenue and Taxation Code section 7205(b)(2), changed the place of sale from the place of business of the retailer to the point of delivery of the jet fuel to the aircraft provided that the retailer has more than one place of business in this state and the principal negotiations are conducted in this state.)

710.0033 **Sales Contract—Goods Not Shipped at Once.** A contract/purchase order involving the sale/purchase of goods for \$500,000 or more contemplates that the goods might not all be shipped at once. They may be shipped in separate lots each with its own invoices. In such a case, the total value of the sales contract would determine if the retailer should be reporting local use tax directly to the jurisdiction of the purchaser under Regulation 1802(c)(1) rather than to the countywide pool. 2/11/97.

710.0040 **Vending Machine Sales.** Place of sale for local taxes in the case of sales made through vending machines, is the place where the vending machine is located. 5/29/56.

[710.0150](#) **Website vs. Warehouse.** An on-line retailer has no sales office in California. Its corporate headquarters, the computer server on which the retailer's website is located, and the warehouse from which orders are shipped are located in three different California cities. Customers place orders on the retailer's website. The orders are transmitted electronically to the warehouse, where the orders are processed and the goods are placed on the retailer's truck for delivery to the customers.

A website is not a place of business for purposes of the local sales and use tax. Here, the retailer's employees first become involved in processing the orders at the warehouse. Accordingly, the warehouse is the place of sale for local sales tax purposes. The local sales tax is allocated to the place where the customer negotiates the sale with the retailer. 8/18/99. (2000-2).

[710.0151](#) **Website vs. Third-Party Warehouse.** Orders are placed with the retailer through its Internet website. Employees at the retailer's warehouse, located in City A, process the orders placed on the website. Employees located at the retailer's headquarters, in City B, do not come into contact with the order at all unless there is a problem requiring customer service after the order is placed. The server hosting the website is in City C. All cities in this scenario are located in California.

During the allocation inquiry period, the retailer spun the warehouse operation off to a wholly-owned subsidiary so that, except when the need for customer service arises after the order is placed, no employees of the retailer participate in the sale. After the warehouse was spun off, the subsidiary sold the goods to the retailer ex-tax for resale, and the retailer sells the goods to the customer.

For sales made after the spinoff of the warehouse operation, when the retailer has only one office in the state the only place to which the local sales tax revenue can be allocated is City B. For in-state transactions, the retailer's employees must participate in negotiating the sale for local sales tax to be allocated directly. Since the retailer's employees do not become involved in the sales, if at all, until after the order is placed, the local sales tax derived from these sales must be allocated to City B through the medium of the countywide pool of the county in which City B is located. 10/30/02. (2003-3).