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# UNIFORM LOCAL SALES AND USE TAX ANNOTATIONS

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**700.0000 APPLICATION OF TAX—Regulation 1803**

700.0001 **Application of City Sales Tax.** The sales tax is an excise tax levied for the privilege of conducting a retail business and is measured as a percentage of the gross receipts from sales. For sales tax to apply to sales of goods that are shipped from an out-of-state retailer to a California purchaser, two criteria must be met: (1) there must be participation in the sales by a previously-established sales office of the retailer in this state; and (2) the sale must take place in California.

Similar to criterion (2) above, a city can tax a selling activity only when that activity occurs within its borders. The fact that title may pass in a particular city does not give that city the power to tax the sale unless the retailer also exercises its privilege of selling within the city, i.e., the retailer maintains a place of sale there. A location cannot be considered a place of sale of the retailer under Regulation 1802 unless it can be issued a seller's permit. (Rev. & Tax Code §§ 6066 et seq.) Regulation 1699(a) requires that for a location to be issued a permit, the place must be owned or controlled by the retailer at which clients customarily negotiate sales. A place where title passes thus does not qualify as a place of sale unless the sale is negotiated there.

The State sales tax laws are incorporated into the Local Tax Law. (Rev. & Tax. Code §§ 7202(b) and 7203(a).) The local tax ordinances are subject to the same constraints to which the state is subject, plus they are subject to whatever limitations are provided in the state sales tax itself. A *sales* tax enacted by a city and/or county under the Bradley Burns Uniform Sales and Use Tax Law (local tax) may not be applied to a transaction that is subject to state *use* tax. If the sales at issue are subject to state sales tax, they are subject to local sales tax. If the sales are subject to state use tax, then local use tax applies. 6/14/02. (2003–2).

700.0010 **Allocation of Local Use Tax.** When goods are located out of state at the time of the sale and shipped to the customer in-state, the use tax applies. Where use tax applies, the place of sale rules for allocation of local tax do not apply. The tax consequences are determined by the place of first functional use. Local tax should be allocated to the county of first functional use. 2/3/94.

700.0020 **Armed Forces Personnel.** If a member of the Armed Forces stationed in a conforming county purchases a motor vehicle in a nonconforming county for use in the conforming county, the local use tax will be considered applicable. The state use tax and the state-administered local use tax are not applicable if the vehicle is purchased outside this state by a member of the Armed Forces unless his intention to use the vehicle in this state results from his own determination apart from his status as a member of the Armed Forces, as, for example, where he buys the vehicle in anticipation of discharge and brings the vehicle to California in pursuance of his intention to do so solely as a matter of his own volition. 5/17/57. (With respect to purchases made on and after October 1, 1969, the serviceman will be considered to have made his own independent determination to use the vehicle in California if he contracts to purchase the vehicle after he has received official orders transferring him to California.)

700.0040 **Banks.** The constitutional exemption of banks from all taxes other than the in lieu income tax, exempts banks from the state use tax and likewise from a local use tax. 10/3/56.

**APPLICATION OF TAX (Contd.)**

700.0060 **Banks and Insurance Companies.** The constitutional prohibition of the imposition of a tax directly upon banks or insurance companies would prevent the imposition of a local use tax to the same extent that it prevents the application of the state use tax. Similarly, in transactions involving retail sales to banks or insurance companies the seller is liable for payment of local sales taxes imposed by ordinances adopted under the Bradley-Burns Law to the same extent as in the case of sales to other purchasers. 7/21/58; 7/25/58.

700.0066 **Disclosure of Taxpayer Information by City.** A city audited a taxpayer with respect to a local tax. The sales reported by the taxpayer with respect to the local tax differed from the sales reported to the Board. This city is not barred by confidentiality requirements from disclosing to the taxpayer that there is discrepancy between the two returns filed by that taxpayer. Obviously the city could not disclose the information received from the Board to a different taxpayer. 10/10/86.

700.0070 **Duty To Collect.** A free weekly publication, which does not qualify as a newspaper, is printed in Solano County, pursuant to a contract. The printer ships the printed paper to the publisher in San Francisco County by means of its own facilities.

First of all, under certain conditions the paper may qualify for the "printed sales message" exemption. If this is the case, the printing sales to the publisher are exempt from tax.

Second, the printer, as the retailer is responsible for the sales tax, but may collect sales tax reimbursement from the purchaser pursuant to agreement. The purchaser owes the district use tax which the retailer may have a duty to collect. The printer makes its sales in Solano County, outside of any taxing district and is responsible for sales tax at the statewide rate. The giving away of tangible personal property constitutes a taxable use of such property which occurs where the donation is made, in this case, the county of San Francisco. Since the purchaser is liable for use tax, the publisher owes the use tax. If the printer makes sufficient deliveries into San Francisco County, or has sales agents or other representatives there, the printer has a duty to collect such use taxes, measured by its charges. 9/9/91.

700.0080 **Executory Contracts.** Local sales and use taxes apply even though the contract under which a sale is made was entered into prior to the effective date of the local tax. 6/27/56.

700.0100 **Former Local Exemptions of Government Bodies.** The former exemption of the state and its governmental instrumentalities, such as school districts, no longer applies in counties and cities which have conformed their ordinances under the Uniform Local Sales and Use Tax Law, providing for state administration. 4/30/56.

700.0120 **Fuel Oil.** To the extent that the sale of fuel is exempt from state sales tax under Section 6385 of the Sales and Use Tax Law, it is also exempt from local sales tax. If, however, only a portion of the sale is exempt from State tax (i.e., if

less than the total amount purchased is covered under a bill of lading), the sale of the portion not so covered is subject to local sales tax if purchased in a conforming county, except that portion that is consumed outside the county. 6/14/57.

700.0140 **Fungible Goods.** The sale of fuel oil to common carriers is subject to local tax as to that portion consumed in the county. The portion consumed outside the county is exempt from local tax.

The same is true of gasoline if the fuel license tax were inapplicable or refunded so that the sale would not be exempt from state sales tax.

As to lubricating oils and greases, they are not consumed by combustion as in the case of fuel. Their use is a continuing use of the total amount purchased. If the oil and grease is used in vehicles traveling a greater number of miles outside the county than inside the county, the sale of the oil and grease falls within the exemption. 10/31/56.

700.0160 **Lease Contracts—Rentals When County Becomes Conforming.** If property has been placed in rental service in a county prior to the time the County adopts a State-Administered Local Sales and Use Tax Ordinance, amounts received under the lease agreement after the county adopts such an ordinance are not subject to the local tax. 4/1/59.

700.0169 **Local Tax Allocation.** A California county is building a regional medical center inside a city within the boundaries of the county. There are multi-million dollar purchases of materials, fixtures, and machinery and equipment used to build the medical center. Medical equipment will be purchased and installed later in order to enable the renter to operate as a hospital. The items in question were purchased from out-of-state vendors without the participation of any in-state offices any of those vendors may have. The installing contractor never obtains title to the property purchased by the county.

Under these facts, the contractor building the medical center is installing customer-furnished property rather than property it furnishes. As a result, the project is not a construction contract for sales and use tax purposes. Rather, it provides for the purchase of tangible personal property by the county for use in California. The county owes use tax on that use (section 6201). As the items at issue are delivered directly to the jobsite in the city, the first functional use occurs there. Therefore, the city's local use tax ordinance applies to these transactions. 1/19/96.

700.0170 **Local Tax Allocation.** Shipments of goods by common carrier from an out-of-state location, to California consumers, are generally subject to the use tax not the sales tax. This is true, even if the order was placed at the seller's California sales office. For purposes of the local tax, retailers who sell from both a California location and an out-of-state location are required to allocate their out-of-state sales to the county to which they ship the merchandise, rather than to the California location at which the order was placed. 1/9/90.

**APPLICATION OF TAX (Contd.)**

700.0175 **Local Tax Rate New City.** A county's Local Sales and Use Tax ordinance contains a clause rendering the ordinance inoperative " . . . should any city within the County increase the rate of its sales or use tax above the rate of .95%." The fact that a newly incorporated city in the county adopts a Local Sales and Use Tax with the rate of 1% does not cause the county ordinance to become inoperative.

In the unpublished case of *City of Dublin* v. *County of Alameda,* the court, following the cardinal rule of statutory construction, said that words in an ordinance must be given their plain and ordinary meaning. Since the new city did not raise its rate to 1%, the county ordinance was not rendered inoperative. 9/28/92.

700.0176 **Los Angeles Municipal Code Section (MC) 63.92.1 Tax.** MC section 63.92.1 imposes a business license tax for the privilege of storing fuel products at the Los Angeles Airport. The incidence of the tax is on the person providing the fuel products at the airport (exercising the privilege) and not the user of the product. The state and local use tax is measured by the sales price of the property (section 6201), whereas the MC tax is measured by the amount of product stored. The measure of tax is not determinative of its nature but is given some weight in the analysis. (*Weekes* v. *City of Oakland* (1978) 21 Cal.3d 386, 397–398.)

Finally, the revenues derived from this tax do not go into Los Angeles' General Fund but into a special fund for the airport. Thus, under the above authority, the tax levied by MC 623.92.1 is not substantially similar to a local use tax and so does not violate section 7203.5. 2/29/96.

700.0178 **Notice of Misallocation.** Notice from a taxpayer regarding misallocation of tax to one city on a tax return is not automatically notice that other cities are affected. Whether notice of an error for one city can be notice as to other cities depends on the facts and the contents of the notice. 11/23/94.

700.0180 **Order Placed Out-of-State.** Local sales tax applies if merchandise is delivered to a California consumer from the seller's California warehouse even though the order may be placed with an out-of-state office of the seller. 4/8/65.

700.0190 **Property Transshipped to Offshore Platforms.** Property delivered to the customers warehouse and subsequently shipped to an offshore platform is subject to the Bradley-Burns Local Use Tax. California's coastal counties jurisdiction extends outward to the three mile limit. 12/6/90.

700.0196 **Reallocation of Revenue.** The taxpayer notified the Board by letter dated March 29, 1993 that the taxpayer was reporting tax under an incorrect Tax Area Code (TAC) and requested reallocation to a particular city. The Board's file indicated that the error was corrected on July 1, 1993. However, an error in the computer's registration field prevented the on-line correction from going through so that all periods subsequent to the third quarter 1993 went to a different jurisdiction. On October 25, 1995, the Board discovered the error.

**APPLICATION OF TAX (Contd.)**

Facts that are actually in possession of the Board do not constitute knowledge of an erroneous allocation unless the taxpayer, an employee or the Board, or some other person questions the correction of the local tax allocation. In this case, the Board records showed that the original error was corrected on July 1, 1993, effective back to April 1, 1992. The taxpayer's records indicated that the error was cleared on July 1, 1993. There is no indication in the documents available at the time that the Board had any knowledge that the error was not corrected for subsequent periods. Consequently, the October 25, 1995 date (date Board employee discovered the error) constitutes a notification in the fourth quarter of 1995 of a new error. As a result, section 7209 does not authorize reallocation back further than the first quarter 1995. 1/19/96.

700.0200 **Resale Certificates by Municipality.** A municipality holding a seller's permit may not use resale certificates in the purchase of property for consumption from out-of-city suppliers and thus be able to report and pay local tax on such property with its annual returns, so that city monies paid for local use taxes would be allocated to the city. Such a use of resale certificates would be improper. 7/9/63.

700.0210 **Sales By Fueling Network.** A fueling network has three parties involved in each network transaction: the ''host participant,'' the ''foreign participant,'' and the ''trucker.'' The host participant is the person who physically provides the fuel. The foreign participant is the party who contracts with the trucker for the sale of fuel to the trucker.

Each participant has its own truckers to whom it issues network cards, and enters into agreements with each trucker for the sale of fuel at a specific price. This price is confidential; whenever a sale is made within the network, the host participant is never apprised of the retail selling price of the fuel. For participation in the sale of the fuel through the network, the host participant is reimbursed for its cost of the fuel, as determined by the OPIS price at the time of the sale, plus actual freight charges and a previously agreed upon network allowance.

When the foreign participant is engaged in business in this state, the host participant is a seller making a sale for resale to the foreign participant. Thus, the retail sale is made by the foreign participant directly to the trucker (consumer) with whom it has an agreement for the sale of fuel. As the negotiations leading up to the sale are entirely between the foreign participant and the trucker, the location of the place of business of the foreign participant is the place of sale of the fuel for local tax purposes under Regulation 1802(a)(2). The same holds true for district taxes. (Regulation 1822(a)(2).) However, the local and district tax consequences differ.

The local sales tax would be allocated to the location of the foreign participant's place of business, but the sale would be subject to the district use tax, if any, of the location in which the host participant delivered the fuel. (Regulation 1823(a)(2)(B).) For purposes of collecting the tax, the foreign participant would be considered engaged in business in the district under Regulation 1827(c)(2) and so required to collect its use tax. (Regulation 1827(a).)

**APPLICATION OF TAX (Contd.)**

When the foreign participant's place of business is located out of state and is not engaged in business in the state, the host participant is deemed the retailer under the second paragraph of section 6007. The applicable local tax is that of the location of the host participant's place of business. (Regulation 1802 (a)(1).) If the host participant is located in a taxing district, the transaction (sales) tax of that district (or districts) applies to the sale. Thus, the tax rate in effect at the host participant's location will apply whether the foreign participant is engaged in business in this state (and thus, the retailer) or not (meaning that the host participant is deemed the retailer). (Regulation 1823(a)(1).) 1/29/96.

700.0212 **San Francisco City and County Business License Tax.** The San Francisco City and County license tax on gun dealers, which was raised from 1.5% of gross receipts to 3%, is not a tax on the consumption of tangible personal property. It is also not a tax ''passed through the customers.'' Therefore, it is not ''substantially similar'' to a sales and use tax so as to trigger the provisions of section 7203.5. 8/9/96.

700.0214 **Seller's Permits for County Departments.** County departments and employees cannot obtain a seller's permit so that they can purchase property for resale to other departments in the same county for local tax allocation purposes. For a sale to occur there must be a transfer of title to or possession of tangible property for a consideration from one person to another. Since the county, its departments, and its employees are a single ''person'' for sales and use tax purposes, there can be no sale. 5/30/86.

700.0220 **State Purchases.** Where a sale to the state takes place in a county without a local tax the vendor will not be asked to bill the tax, but to the extent applicable, the use tax of the city or county of use will be paid directly by the purchasing agency. 4/30/56.

700.0230 **Transfer of Funds to Local Agency.** Under section 7204, local tax revenue collected by the Board must be transmitted to the conforming jurisdiction from whose tax it was derived. The Board cannot enter into agreements with an agency and a city to split the revenues derived from the agency's tax between the agency and city.

Under the local tax scheme, the Board contracts with each conforming agency to administer and enforce its tax and cannot contract to administer two taxes under one agreement. Thus, the Board could not agree to collect the tax on behalf of one agency yet give the revenue to another. It can only agree to transmit the revenues to the agency imposing the tax. However, what the agency does with the money after the revenue is transmitted is its business. 12/17/93.

700.0240 **Use in Different Counties.** In applying the use tax to property first used outside the taxing county, the property is to be considered as purchased for use in the taxing county only if it is principally used there. 3/7/58.

700.0260 **Use in Interstate Commerce or Outside State.** Local use tax does not apply to items placed in use outside this state and thereafter used entirely outside this state, or continuously in interstate or foreign commerce, no intrastate use being made in California. 5/12/66.

## 702.0000 TRANSMITTAL, LIMITATION, REDISTRIBUTION OF LOCAL TAX

702.0010 **Access to Confidential Information by Consulting Firms.** In order for the Board to legally provide confidential tax information to a person other than an officer or employee of the local jurisdiction, a resolution must exist which certifies that the consultant has an existing contract with the local jurisdiction to examine sales and use tax records. Once a contract has expired or been terminated, it is not "an existing contract" and cannot satisfy the requirement of section 7056(b)(1)(A). Therefore, the Board should discontinue supplying confidential information to a local jurisdiction's consulting firm once the Board learns that the jurisdiction's contract with the consultant has expired or been terminated. The Board cannot wait for the resolution to be rescinded before stopping the disclosure of confidential information to the consultant. The local jurisdiction's current resolution remains valid as to the release of information directly to the local jurisdiction. If the local jurisdiction provides the Board with written notification that it has entered into a new contract with the same consultant which meets the requirements of section 7056(b)(1), the Board can resume providing information under the current resolution. 8/8/97. (M98–3).

702.0025 **Allocation Errors Due to Registration Change.** The date of knowledge of local tax allocation errors arising out of a registration change is not the date of the change but the date the Board's staff member questions the registration, without regard to the reason the error occurred. The person raising the issue need not be the person who actually reviewed the change of registration list. This rule applies when the error is caught by a Board staff member. Otherwise, the date-of-knowledge rules involving inquiries from participating jurisdictions apply. 5/1/96.

702.0175 **Date of Knowledge of Improper Distribution.** The date of knowledge is the date on which the Board receives a communication with facts which indicate the probability of an improper distribution and such reported allocation is later found to be erroneous. The mere providing of a list of potential misallocations and no specific information regarding the facts which lead to believe there is a misallocation does not constitute a date on which the Board obtains knowledge of an improper distribution. 6/10/92.

702.0285 **Fees on Airport Rental Car Operations.** Sacramento County imposes a fee on rental car companies on the grounds of the Sacramento International Airport and on off-airport rental car companies.

The fees exacted from on-airport providers are by contract rather than ordinance. Therefore, since the obligation to pay fees is created by contract between the airport and the provider, the fees are not taxes at all. (*Perry* v. *Washburn* (1862) 20 Cal. 318, 350.) Therefore, these fees collected from on-airport providers do not conflict with Sacramento County's local sales and use tax ordinance.

The fees collected from off-airport providers, however, are imposed by Sacramento County Code Ordinance Chapter 11.09. The rate set by resolution is 10 percent of gross receipts, but only those generated by airport-related

customers. The resolution exempts from the measure of the fee the first $12,500 per month of gross receipts. Neither the resolution nor Chapter 11.09 provides that the rental company may collect reimbursement for these fees directly from the customer. Also, the rental car companies do not separately pass the fees through to their customers.

Based on the California Supreme Court case *Weeks* v. *City of Oakland,* the fee on off-airport car rental companies is exactly what it says it is: a fee imposed on rental car companies located outside the Airport for the privilege of coming onto its property to rent cars to customers. The resolution makes it clear that a primary consideration for the fee is to prevent off-site operators from having an unfair advantage over on-airport operators and to provide the latter a disincentive to move off the Airport when their contracts come up for renewal. As the incidents of the fee indicate that it is not sales or use tax, the fact that it is measured by gross receipts does not convert the fee into a use tax. The lack of a pass-through feature is also highly important. Thus, the fee is not substantially similar to a sales or use tax and so is not effectively ''preempted'' by the State under section 7203.5. 11/22/96.

702.0400 **Offsets—District Taxes.** The overpayment of taxes imposed by one taxing jurisdiction such as a district transportation tax cannot be used to offset state sales tax, Bradley-Burns Tax or other district taxes. While the Board administers and enforces the taxes, each jurisdiction's tax is individually imposed and may not be offset against another jurisdiction's tax. 4/28/97.

702.0500 **Offset Portion.** Section 7204.1(a)(4) defines ''offset portion'' as the greater of $50,000 or ''20 percent of the local agency's quarterly taxes.'' No method of determining the ''quarterly taxes'' is specified. Since a city presumably bases its request for offset treatment on the most recent revenue stream, it is reasonable to calculate the offset portion using the average of the last four quarterly collections. 8/12/97. (M98–3).

702.0900 **Reallocation—First Knowledge.** The date on which first knowledge of local tax misallocation is received at any location or by any employee of the Board is the date of first knowledge for purposes of reallocation. However, the ''knowledge'' of misallocation is limited to the locations of the taxpayer referred to in the source of the knowledge. If, for example, the source is a letter from the taxpayer which mentions misallocation between two of ten locations operated, subsequent discoveries of misallocation between other locations will have a different date of first knowledge, determined by when the subsequent discoveries are made. 7/27/90.

702.1010 **Reallocations—Limitation Period.** Under section 7209, the Board may reallocate local tax revenue through two quarters prior to the quarterly period in which it receives facts indicating that there has been an improper distribution of local tax revenue. Where a reallocation has been previously made and new facts merely correct the amount of the original transfer, a further transfer is permitted based on the original date of knowledge. On the other hand, where the fact pattern goes to the substantive issue of the place of sale or use as in, for

example, a request to further reallocate funds due to discovery of a new sales office, then a new date of knowledge has been established. However, the same rules regarding reallocation of misallocated amounts apply to a reallocation. Thus, if a reallocation is incorrect and the Board receives new information showing the error within two quarters of the misallocated reallocation, the misallocated amounts can be reallocated. 5/25/95; 1/7/97.

702.1050 **Redistribution of Local Tax—When Not Done.** Uniform Local Sales and Use Tax Law section 7209 provides that the Board ''may'' redistribute local tax. The word ''may'' used in legislation is to be given its common and ordinary meaning and to be construed as permissive or conferring discretion. It is to be construed as mandatory only when it appears from the terms of the statute in which it is used that it was the clear policy and intent of the legislature to impose a duty, and not simply to confer a discretionary power. Section 7209 was enacted not to confer reallocation authority upon the Board but to put a limit on reallocations in order to avoid causing the losing city severe financial hardship. The legislative history of section 7209 indicates that the Legislature wanted the Board to have discretion in deciding whether or not to make a reallocation.

Local tax revenue should not be reallocated in circumstances where the factual and legal issues that resulted in a prior misallocation are only just now being resolved. For instance, some transactions, like Internet sales, are evolving areas with new issues arising all the time. In view of the fact that the losing city will have already spent the money previously allocated to it, reallocations should not be made under such circumstances. 10/30/02. (2003–3).

## 705.0000 CONSTRUCTION CONTRACTORS—Regulation 1806

705.1000 **Time and Materials Contracts.** In the case of time and materials contracts, the place of sale of fixtures and the place of use of materials that were not purchased tax paid is the jobsite. (Regulation 1806(b).) 10/8/96.

## 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.

**PLACE OF SALE, ETC. (Contd.)**

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.

**PLACE OF SALE, ETC. (Contd.)**

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 county-wide pool of the county in which City B is located. 10/30/02. (2003–3).

**715.0000 AIRCRAFT COMMON CARRIERS AND WATERBORNE VESSELS—Regulation 1805**

(Note: References to waterborne vessels relate to a partial tax exemption in effect prior to January 1, 1984, and between March 1, 1984 and January 1, 1988.)

**(a)** MATTERS COMMON TO BOTH CATEGORIES

**(1)** GENERAL

715.0010 **Air Cargo Containers.** Air cargo containers are transported to shippers who fill them. Then the filled containers are transported over the highway to the air carrier's docks. When shipping space is available, the filled containers are loaded on the aircraft and carried to the destination. Cargo in incoming containers is delivered in the containers and over the roads and highway to the consignor of the goods. Under these circumstances the cargo containers are not used by the aircraft operator exclusively in the operation of aircraft as common carriers of persons or property for hire or compensation. Therefore, the exemption provided by Regulation 1805 does not apply with respect to such cargo containers. 1/27/83.

715.0040 **Exclusive Use—General.** The requirement that the property shall be used "exclusively" in common carrier operations will be considered satisfied if the property is so used for at least six months after use commences. 2/17/59; 10/25/89.

715.0080 **Leases.** The exemption of common carriers does not apply to sales made to a firm owning and leasing aircraft to carriers. 10/4/56.

715.0120 **Leases.** The exemption requirements are not met if the exempt property is leased to someone by the purchasing carrier. It is immaterial that the property may be used by the lessee in operations which fall within the scope of Regulation 1805. The exemption controlling factor is that the carrier did not use the property in its own operations as such and thus, did not meet the requirements of the regulation. 2/28/67; 10/25/89.

715.0180 **Supplemental Air Carrier.** An airline which has been issued a supplemental air carrier certificate by the Civil Aeronautics Board and is authorized to make charter flights in the United States and Pacific area, qualifies as a public utility and common carrier under Regulation 1805. 6/30/65. (Am. 2002–2).

**(2)** "DIRECT" USE OF PROPERTY

715.0200 **Alcoholic Beverages.** The sale of alcoholic beverages to airlines or other carriers is not exempt from state-administered local sales or use taxes. Such property is not regarded as being "directly used in the transportation of persons," or as "supplies and equipment used or consumed directly in the carriage of persons or property." 5/4/65.

715.0220 **Books and Playing Cards.** Booklets and playing cards placed on aircraft for the convenience of passengers are not "supplies and equipment used or consumed directly in the carriage of persons," and are not "directly used in the

transportation of persons or property.'' Only items used in the operational sense, as distinguished from items used for the enjoyment of passengers, are ''directly used'' within the meaning of the regulation. 4/18/67.

715.0230 **''Directly Used''—Explained.** The rationale of Annotations 715.0200, 715.0220, and 715.0340 is that those items reasonably necessary for the physical operation of the aircraft (i.e., fuel, repair parts, etc.) and those items reasonably necessary for the sustenance of passengers in flight can be considered as ''directly used.'' Included in this latter category are food service and similar commissary supplies; however, alcoholic beverages, tobacco products, playing cards, and books are excluded. Also excluded are glasses, stirrers, napkins, etc., used in the service of alcoholic beverages. 6/27/73.

715.0260 **Forms—Office Machines.** Freight billing forms are ''office or shop equipment or supplies,'' which under Regulation 1805 do not qualify for the common carrier local tax exemptions. 1/14/66; 10/25/89.

715.0270 **Fuel Sold to Airlines.** Sales of jet fuel used by airlines for pilot training or for testing engines is not exempt from local tax. 7/27/72.

715.0275 **Internal Bookkeeping Machines.** The airline's internal bookkeeping machine and communications device used to determine availability of passenger or cargo space on particular future flights is not a device directly used in the transportation of persons and property as are the ticketing machines, credit card stampers and baggage scales. 1/21/74.

715.0310 **Pillows and Pillowcases.** Pillows and pillowcases used aboard aircraft are not regarded as directly and exclusively used in the use of aircraft as common carriers. The local sales tax and district sales tax apply to the sale or use of pillows and pillowcases by aircraft common carriers. 9/16/83.

715.0360 **Uniforms.** Uniforms for use by company personnel are not within the exemption from local sales and use taxes applicable to certain property used by common carriers and waterborne vessels. We do not believe that uniforms for personnel meet the requirement of (d) of Regulation 1805. 4/4/67.

**(c)** AIRCRAFT COMMON CARRIERS AND WATERBORNE VESSELS

715.0460 **Certificate.** In order to be considered a common carrier, the carrier must offer to the public to carry persons, property or messages. If a carrier is considered a common carrier under the rules and regulations of the Interstate Commerce Commission, it will be considered a common carrier. It is not necessary to have a California Public Utilities Commission certificate in order to be considered a common carrier. 12/28/64.

715.0465 **Certificates of Public Convenience and Necessity.** Since 1978, the federal requirement that air carriers possess certificates of public convenience and necessity no longer applies. At about the same time, the California Public Utility Commission also eliminated such requirement. The requirement for air carriers to operate ''under a certificate of public convenience and necessity issued

pursuant to the laws of this state, the United States,'' as set forth under Regulations 1805(b)(2) and 1825(b)(2) is no longer applicable. Accordingly, sales to aircraft common carriers qualify for the exemption under the above regulations if the remaining conditions of the exemption are met. 3/10/86.

715.0490 **Fuel Used in County of Purchase.** A common carrier airline purchases jet fuel in California. If enough fuel is on board prior to California fueling to reach the first out-of-state landing point, all of the fuel purchased in California is exempt from state tax if the requirements of Regulation 1621 are met. If no state tax applies, then no local or district tax can apply.

If, however, only a portion of the sale of fuel was exempt from state tax (i.e., if there was not enough fuel on board prior to California fueling to reach the first out-of-state landing point), the amount of fuel subject to state sales tax will be the total amount of fuel consumed in reaching the first out-of-state landing point less the amount of fuel that was on hand when the aircraft landed in California. The amount subject to local and district sales tax is the amount of fuel sold and consumed in the county of sale (but this shall not exceed the amount subject to state tax). 3/26/79.

715.0515 **Local Tax Exemptions.** Information was requested regarding the application of the local tax exemptions to the following items purchased by airlines for use in their business and also any guidelines to determine which items qualify for the exemption.

(1) Sodas and Ice. The airline is considered the consumer when these items are served as part of meals and they qualify for the exemption. When these items are sold or furnished as a component part of alcoholic beverages, they are not eligible for the exemption.

(2) Alcoholic Beverages. Even when served as part of a meal, they are not directly used in carriage service. No exemption is available.

(3) Electronic Flight Information Display System. These monitors are used as part of the airline's business activity, but are for the benefit of the general public, including ticketed passengers. No exemption applies.

(4) Computer Equipment Used for Reservations and Ticketing. Assuming that the equipment is used solely for reservations and ticketing, it qualifies for the exemption.

(5) Ticket Counters, Sky Cap Stations, Gate Check In Counters. Assuming these items are used as part of the airline's business activity, they qualify for the exemption.

(6) Signboards. They fill much the same role as printed schedules. While useful to the business, they are not essential and do not qualify for the exemption.

(7) Menu Used for Meal Selection. While a convenience, they are not reasonably necessary for passenger maintenance; no exemption applies.

(8) Pillows. See response to Item 7.

(9) Ticket Envelope. Holds the ticket and also advises the passenger of the flight number and seat assignment. The exemption appplies.

(10) Polyliner Bags. Used to collect passenger discards and trash from the restrooms. Assuming this item was purchased from sellers outside ''airport counties'', if used at the airport, the use tax exemption would apply.

(11) Markers. Used for mailing tickets and also general administrative functions. The exemption does not apply.

(12) Ground Power Units and Air Start Carts. The use tax exemption does not apply to shop equipment nor to aircraft engine and systems test equipment.

(13) Ground Handling Equipment. Tugs used for positioning the aircraft and ground equipment used for transporting the baggage to, and loading it on the aircraft qualify for the exemption.

To qualify for the operation of partial exemption from local use tax, the property must be used directly and exclusively in the use of aircraft for the carriage of persons or property. Sales to airlines of tangible personal property which is generally useful to the business but not directly and exclusively involved in the carriage of persons and property which is part of the carrier's business activity, are not covered by the exemption. 8/30/91, 12/4/91.

715.0517 **Packing Material Supplied to Customers.** An aircraft common carrier of property furnishes packing material to customers who place the property to be shipped into the packing material furnished. If the packaging is provided to customers in the county in which the sale of the packaging to the common carrier occurred, that sale of the packaging material to the common carrier would not qualify for the exemption from local tax provided by Regulation 1805. The customer's labeling of the packaging and insertion of the contents is a principal use of the property in the county of purchase. 6/18/91.

715.0518 **Place of Sale for Fuel Sold to Aircraft Common Carrier.** Corporation A, a wholly owned subsidiary of Corporation B, was organized for the purpose of purchasing aircraft fuel from fuel suppliers and reselling the fuel to B. Two questions were asked:

(1) Is the point of sale on a ''needs'' contract the same for local and state tax purposes, particularly when the seller's only California location is in a county other than the county in which the fuel is delivered? (''Needs'' or ''requirements'' contracts call for the furnishing of fuel to the airline at a stipulated price. The contract may provide for minimum and maximum amounts of fuel and all other details except amount of fuel to be placed in a particular aircraft and the particular time of delivery.)

It makes no difference whether or not the fuel contracts are requirements contracts. The sale for sales and use tax purposes occurs when B, not A, takes possession of the fuel. Whether there is a requirements contract or not, this occurs when the suppliers who sold the fuel to A for resale to B, actually deliver the fuel to the aircraft.

(2) If the point of sale for local tax purposes is different than for state tax, what minimum requirements must the seller meet to establish a presence in a specific county other than the county of delivery?

If there are facts which indicate that B's employees, acting as agents on behalf of A, in B's California office, take any part in negotiations for the sale of fuel by A to B (including, for example, taking orders for the quantities of fuel to be delivered at the airport), then those facts could be sufficient to establish that A has a place of business in California for Bradley-Burns and district tax purposes. It would not matter whether the principal negotiations for the sales occurred out of state, as long as some activity related to sales is attributed to the California office. Since that California office would be its sole place of business in California, all sales for Bradley-Burns and district tax purposes would be considered to have occurred in that county and not in the county of delivery.

Thus A's sales of fuel to B would qualify for the 80% exemption from Bradley-Burns taxes and the full exemption from district taxes, because the fuel sold would be entirely consumed outside of the county of the place of sale. 4/14/89. (Am. 2002–2).

(Note: Subsequent statutory change July 29, 1991, regarding ''exemption for fuel''.)

(Note: Statutory change operative January 1, 1999, regarding ''place of sale of jet fuel'', and see Regulation 1805. Also note statutory changes in Revenue and Taxation Code sections 7204.03 and 7205 regarding ''place of sale of jet fuel'' and see Regulation 1802(b)(7).)

715.0520 **Private Carriers.** The exemption of sales to common carriers does not apply to sales to private or contract carriers. 10/18/56.

715.0580 **Wholly Interstate Carrier—Constitutionality.** The conclusion that the imposition of local use tax on the use of property by a wholly interstate carrier would be unconstitutional is effective from the date of the local ordinance imposing the tax. Refund claims may be filed within three years from the last day of the month following the close of the quarterly period for which the tax was paid. 11/16/64.