



Private Letter Ruling 03-022

Redacted Version

Taxability of Certain Sales for Employee or Customer Incentive Programs

January 21, 2004

A Private Letter Ruling based upon the following scenario was requested:

A company (the “Company”) that has nexus in all 50 states and is not based in Louisiana uses agents or distributors to solicit catalogs to companies that run employee or customer incentive programs. The companies that select these catalogs to best fit their needs are referred to as “End Clients.” The agents or distributors are referred to as “Distributors.” When an employee or customer qualifies for an item in one of Company’s catalogs, he fills out an order form and sends it to Company’s office. Company processes the order and ships the merchandise to the employee or customer and bills the Distributor, who is purchasing the items of tangible personal property from Company at a discounted price. Distributor then sells the item to End Client at a negotiated price.

A ruling was requested to determine who is responsible for the Louisiana sales or use tax and on what amount in the following scenarios:

- 1) The Distributor and End Client are both located outside of Louisiana and neither have nexus in Louisiana. Merchandise is being shipped to participants who live in Louisiana.
- 2) The Distributor and End Client are located in Louisiana, both have nexus in Louisiana, and merchandise is being shipped to participants in Louisiana.
- 3) The End Client is located in Louisiana, the Distributor is located outside of Louisiana and does not have Louisiana nexus, and merchandise is being shipped into Louisiana.
- 4) The End Client is located in Louisiana, the Distributor is located outside of Louisiana and does not have Louisiana nexus, and merchandise is being shipped into Louisiana.

Following is a discussion of the Louisiana sales and use tax as it applies in general. Thereafter each specific scenario is addressed.

La. R.S. 47:302(A), 321(A) and 331(A) provide that tax is due “upon the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of each item or article of tangible personal property...” The term “sale at retail” is defined in La. R.S. 47:301(10)(a)(i) as “a sale to a consumer or to any other person for any purpose other than for resale as tangible personal property...” If sales or use tax is due, the purchaser is responsible for paying the tax and the dealer is responsible for collecting the tax. (La. R.S. 47:303(A) and 304). If, however, the purchaser is buying the item in order to resell it, the transaction is not a retail sale according to La. R.S. 47:301(10), but rather a sale for resale. If this is the case, the seller must collect advance sales tax from the purchaser. When the purchaser resells the item and charges sales tax, he may deduct the amount of advance sales tax he has paid from the amount of sales tax he collected on his sales tax return. (La. R.S. 47:30(B)(3)). However, if the purchaser has an exemption identification number

issued by the Louisiana Department of Revenue in accordance with La. R.S. 47:306(B), he will not be responsible for paying the advance sales tax and the seller will not be responsible for collecting the advance sales tax. Finally, La. R.S. 47:302 provides that there shall be no duplication of the tax. This means that either the sales or the use tax will be due on the transaction, but not both.

When sales tax is due on a transaction, it is due on the sales price. (La. R.S. 47:302(A)(1), 321(A)(1) and 331(A)(1)). “Sales price” is defined in La. R.S. 47:301(13) as:

“The total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing which shall not exceed the legal interest rate and a service charge not to exceed six percent of the amount financed, and losses; provided that cash discounts allowed and taken on sales shall not be included, nor shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling, or repairing property sold.”

When use tax is due on a transaction, it is due on the cost price. (La. R.S. 47:302(A)(2), 321(A)(2) and 331(A)(2)). “Cost price” is defined in La. R.S. 47:301(3) as:

“The actual cost of the articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service cost, except those service costs for installing the articles of tangible personal property if such cost is separately billed to the customer at the time of installation, transportation charges, or any other expenses whatsoever, or the reasonable market value of the tangible personal property at the time it becomes susceptible to the use tax, whichever is less.”

Application to specific scenarios

1) *The Distributor and End Client are both located outside of Louisiana and neither have nexus in Louisiana. Merchandise is being shipped to participants who live in Louisiana.*

Sale from Company to Distributor

Neither party is located in Louisiana and Distributor does not have Louisiana nexus. The fact that Company has Louisiana nexus does not affect the situation since the purchaser, Distributor, does not have Louisiana nexus. Therefore, as long as Distributor provides documentation to Company that it is not a Louisiana dealer and not required to be registered to collect Louisiana sales and use tax, Company is not required to collect the advance sales tax and Distributor is not required to pay the advance sales tax. However, if Distributor is registered to collect sales or use tax in Louisiana, even though not required to be because it lacks nexus, it must pay the advance sales tax on this purchase and Company must collect the advance sales tax since it has Louisiana nexus. If Distributor has an exemption identification number issued by the Department of Revenue as discussed above, the advance sales tax will not be due.

Sale from Distributor to End Client

Louisiana use tax is due on sales made outside of Louisiana when the item is brought into Louisiana for use, consumption, distribution or storage for use, consumption or distribution in this state, as discussed above. End Client is responsible for the Louisiana use tax since it purchased the item and had it shipped to Louisiana. If Distributor is registered to collect sales or use tax in Louisiana, it is responsible for collecting the use tax from End Client.

If Distributor is registered to collect Louisiana sales or use tax, did not have an exemption identification number and was required to pay tax on its purchase from Company, when it resells the item it is eligible to claim the advance tax credit on its sales tax return. (La. R.S. 47:306(B)). However, if Distributor did present an exemption identification number or other documentation to Company on the original purchase and did not pay sales tax, it is not entitled to claim the advance tax credit.

2) The Distributor and End Client are located in Louisiana, both have nexus in Louisiana, and merchandise is being shipped to participants in Louisiana.

Sale from Company to Distributor

Because the Distributor is located in Louisiana and has nexus with Louisiana, it must pay the advance sales tax. Company has Louisiana nexus and is therefore required to collect the advance sales tax from Distributor. If Distributor has an exemption certificate number as discussed above it will not have to pay the advance sales tax on the transaction.

Sale from Distributor to End Client

Because Distributor and End Client are both located in Louisiana and the property is shipped into Louisiana, Louisiana sales tax is due on the sales price. Distributor is responsible for collecting the tax and End Client is responsible for paying the tax as discussed above since they are both located in Louisiana and both have Louisiana nexus.

If Distributor was required to pay the advance sales tax on its purchase from Company, when it resells the item it is eligible to claim the advance tax credit on its sales tax return as discussed above. However, if Distributor presented an exemption certificate number to Company on the original purchase and did not pay sales tax, it is not entitled to claim the advance tax credit.

3) The End Client is located in Louisiana, the Distributor is located outside of Louisiana and does not have Louisiana nexus, and merchandise is being shipped into Louisiana.

Sale from Company to Distributor

Distributor is not required to pay the advance sales tax because it is not located in Louisiana and does not have Louisiana nexus. However, Distributor must provide documentation to Company that it is not a Louisiana dealer and not required to be registered to collect Louisiana sales or use tax. If Distributor is registered to collect sales or use tax in Louisiana, even though not required to be because it lacks nexus, it must pay the advance sales tax on this purchase and Company must collect

the advance sales tax since it has Louisiana nexus. If Distributor has an exemption identification number issued by the Department of Revenue as discussed above, the advance sales tax will not be due.

Sale from Distributor to End Client

Louisiana use tax is due on sales made outside of Louisiana when the item is brought into Louisiana for use, consumption, distribution or storage for use, consumption or distribution in this state, as discussed above. End Client is responsible for the Louisiana use tax since it purchased the item and had it shipped to Louisiana. If Distributor is registered to collect sales or use tax in Louisiana, even though it is not required to be since it lacks nexus, it is responsible for collecting the use tax from End Client.

If Distributor is registered to collect Louisiana sales or use tax, did not have an exemption identification number and was required to pay tax on his purchase from Company, when it resells the item it is eligible to claim the advance tax credit on its sales tax return as discussed above. However, if Distributor did present an exemption identification number to Company on the original purchase and did not pay sales tax, it is not entitled to claim the advance tax credit.

4) The End Client is located in Louisiana, the Distributor is located outside of Louisiana and does have Louisiana nexus, and merchandise is being shipped into Louisiana.

Sale from Company to Distributor

Although Distributor is located outside of Louisiana, it does have Louisiana nexus. Therefore, it is required to pay the advance sales tax. Company has Louisiana nexus and is therefore required to collect the advance sales tax from Distributor. If Distributor has an exemption certificate number as discussed above, it will not have to pay the advance sales tax on the transaction.

Sale from Distributor to End Client

Because End Client is located in Louisiana, Distributor has Louisiana nexus and the property is shipped into Louisiana, Louisiana sales or use tax is due on this transaction. End Client is responsible for the Louisiana tax since it purchased the item and had it shipped to Louisiana. Because Distributor has Louisiana nexus, it is responsible for collecting the tax from End Client.

If Distributor was required to pay the advance sales tax on its purchase from Company, when it resells the item it is eligible to claim the advance tax credit on its sales tax return as discussed above. However, if Distributor presented an exemption certificate number to Company on the original purchase and did not pay sales tax, it is not entitled to claim the advance tax credit.

In each of the above scenarios, when the sales or use tax is due, it is due on the total amount paid by

the purchasing party, either Distributor or End Client, for the property. The definitions set forth above provide for this. The total amount that is taxable does not include any separately stated charges for the delivery of the property.

If you should have any questions or need additional information, please contact the Policy Services Division at (225) 219-2780.

Sincerely,

Cynthia Bridges
Secretary

By: Cynthia D. Pugh
Attorney
Policy Services Division

This correspondence constitutes a private letter ruling (PLR) by the Louisiana Department of Revenue, as provided for by section 61:III.101 of the Louisiana Administrative Code. A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement that applies principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law, and is not binding on the person who requested it or on any other taxpayer. This PLR is binding on the department only as to the taxpayer to whom it is addressed, and only if the facts presented were truthful and complete and the transaction was carried out as proposed. It continues as authority for the department's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.