

STATE BOARD OF EQUALIZATION

OFFICE CORRESPONDENCE

140.0040

September 11, 1953

To: Stockton – Tax Administrator (BD)

From: Headquarters – Sales Tax Counsel (WWM)

Re: Measure of tax where worn tires are exchanged for new tires.

A while ago, we had occasion to discuss over the telephone with you the application of the sales tax to exchanges of worn tires for new tires. This memorandum is being written to confirm our understanding with respect to such exchanges.

To illustrate, a tire dealer advertises that he will sell a new tire for \$14.00 plus the old tire, irrespective of its condition. In other words, no value is expressly indicated by the parties for the tire which is left by the customer, although it is so left pursuant to the offer.

We believe that the trade-in value of the worn tire must be established and included in taxable gross receipts. We believe this trade-in value to be the difference between the amount of money charged customers leaving their worn tires and the amount of money charged other customers, at a similar time, who do not leave any worn tire in exchange. This latter figure admittedly may be below the list price.

To further illustrate, suppose it is established that the usual price charged customers at that time who do not leave any tire is \$16.00. Then the taxable trade-in value of the worn tire is \$2.00. This should be so whether its fair market value is \$2.00 or 50¢. We agree that it may be difficult, in some instances, to determine what the “going price” without trade-in actually is, particularly where such sales may be few and far between. We feel, however, that in view of the fact that the retailer is holding out that he is giving a larger trade-in allowance than the actual market value of the worn tire, he should bear the burdens as well as the benefits of such bargaining. This we believe is consistent with the reasoning involved in the California case of *Hawley v. Johnson*, 58 Cal. App. 2d 232.

WWM:ja



STATE BOARD OF EQUALIZATION

(916) 324-8208

February 6, 1991

Ms. M--- C---

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--- ---, California XXXXX

Dear Ms. C---:

By letter dated December 26, 1990, you requested our opinion concerning the computation of sales tax by G--- when it gives a customer an allowance on the purchase of a battery in exchange for the customer's old battery.

You state the following in your letter:

"G--- charges their advertised price, adds on the five dollars for the trade-in, taxes that amount and then subtracts the five dollars from the total."

During our telephone conversation on January 30, 1991, you gave an example of G---'s merchandising practice. If G--- advertised a battery for \$30.00, G--- would charge \$30.00 to a customer with a trade-in, add \$5.00 to the price, compute the sales tax on \$35.00, add the tax to the \$35.00, and then give the customer an allowance by subtracting \$5.00 from that total (the \$35.00 plus tax). If a customer did not have a battery to trade in, G--- would charge him \$35.00 plus tax even though the price shown on the battery in the store was \$30.00. In those cases where a customer was given a \$5.00 trade-in allowance, you asked whether G--- should compute the sales tax on the price before or after the allowance.

Section 6051 of the Revenue and Taxation Code imposes a sales tax on retail sales of tangible personal property made in California by retailers. The tax is measured by gross receipts. Gross receipts means the total amount of the sale of the retail sales of retailers, valued in money, whether received in money or otherwise. Rev. & Tax. Code § 6012(a).

Regulation 1654(b), which is based on the statutory definition of gross receipts, provides that when merchandise is "traded in" on the purchase price of other merchandise, the retailer accepting the trade-in must include in the measure of tax the amount agreed upon between seller and buyer as the allowance from the merchandise traded in. Thus, in the example above, G--- must compute sales tax on \$35.00, not \$30.00. The reason is that, without regard to the sales tax, the customer has paid for the new battery with \$35.00 worth of property- - his \$30.00 in cash and his battery, which the parties agreed had a value of \$5.00.

Even if the retailer contends that the trade-in allowance is greater than the value of the item traded in, the trade-in allowance is the amount included in gross receipts for purposes of measuring sales tax. Hawley v. Johnson (1943) 58 Cal. App. 2d 232. Otherwise, the board would be in endless disputes concerning the value of each item traded in. In the example above, G--- must measure sales tax by \$35.00 even if it believes that the value of the battery traded in is only \$2.00.

If the retailer gives the customer a "cash discount", then the sales price is computed on the case discount price, not the price offered to other customers. Rev. & Tax. Code § 6012(c)(1). For example, if G--- retails a battery for \$50.00 but reduces the price by \$5.00 for customers who pay cash, the sales tax for the cash discount sale should be computed on \$45.00. In these sales, without considering the sales tax, the customers have parted with \$45.00 in cash and nothing more.

We are enclosing a complete copy of Regulation 1654 for your information. Please write to us if we can be of further assistance.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cs/0105e

Enclosure: Regulation 1654