

**STATE BOARD OF EQUALIZATION**SACRAMENTO, CALIFORNIA
SACRAMENTO, CALIFORNIA 95808

September 8, 1972

Mr. I. E. L---
Chairman Excise Tax Committee
W--- O--- and G---A---
Box XXXX – TA
--- ---, California XXXXX

Dear Mr. L---:

As you will recall, earlier this year we met with several members of the WOGA Excise Tax Committee to discuss the application of sales tax to certain promotional programs. At that time we agreed to set forth some general principles regarding the application of tax to such programs as it would apply after July 1, 1972, the date on which gasoline became subject to sales tax. These general principles are set forth below.

Sales of premiums to [by] an oil company to its independent dealer. The premium to be given to the dealer's customer – no purchase required.

Under these circumstances, the sale of the premium by the major oil company to the independent dealer is a "sale" for sales and use tax purposes if the amount charged the dealer is 50% or more of the cost of the premium to the oil company. Such a sale is subject to tax on the total amount charged unless the premium is exempt for some other reason (e.g., sale of a food product).

If the amount charged the dealer is less than 50% of the cost, the oil company will be considered to be the consumer of the property and subject to tax on cost unless the property is otherwise exempt (e.g., food product).

In effect, we believe that section (b) of Regulation 1670, copy enclosed, is applicable to situations in which the premium is not resold by the dealer. When the dealer does not require a purchase in order to obtain the premium, he is not reselling the premium, but rather he is making a gift.

Sale of premium by an oil company to an independent dealer. The premium to be given to the dealer's customer only if customer purchases other specified goods or services.

The sale by the oil company of the premium to the independent dealer is a sale for resale. While it is a close question, we believe this is the case even though the selling price is less than 50% of cost.

The subsequent delivery of the premium together with the goods required to be purchased is a sale of both articles and tax applies as set forth in section (c) of Regulation 1670. In the event the goods required to be purchased are of a non-taxable nature (e.g., labor), the selling price of the premium will be deemed to be the cost of the premium to the oil company or the cost to the independent dealer whichever is the greater.

If the premium delivered is an exempt item (e.g., food product) and the goods required to be purchased are of a taxable nature (e.g., gasoline), the same rule would apply. For example, if a jar of jam which costs the oil company \$.25 is sold to the dealer for \$.20, and the dealer delivers the premium upon the purchase of \$4.00 of gasoline, the taxable sale is for \$3.75 (\$4.00 - \$.25). Of course, if the dealer obtains tax reimbursement on a larger amount, he will be required to pay the excess tax reimbursement to the State.

In situations in which the premium is delivered in connection with a transaction involving both taxable and non-taxable charges (e.g., a lube job and an oil change), the problem is one of allocating the total consideration received among the three items (i.e., the premium, the oil change, the lube job). This presents a problem to an independent dealer who probably would have some difficulty in making an allocation. However, we have been unable to come to any different conclusion. Accordingly, we suggest that the allocation method shown on Attachment A should be used to determine total tax due on the transaction.

There was one further question raised by a member of WOGA and I agreed to cover it in this letter.

We understand that some oil companies deliver coupons to their customers which are redeemable at independent service stations for such things as air filters and gasoline. The major oil company redeems the coupons from the dealer for a specified amount. We believe that the independent service station operator is making a sale of the air filter or gasoline, the selling price of which is the amount for which the major oil company redeems the coupon. If the major oil company specifies on the coupon and in its agreement with the dealer that the amount of payment to

the independent dealer includes sales tax reimbursement, then the amount that the dealer receives may also be adjusted for sales tax included.

I believe this letter sets forth the general principles which we will follow. If you have any questions or suggestions regarding this matter, please let me know.

Very truly yours,

Robert Nunes
Principal Tax Auditor

RN:iw
Attach.

bc: Mr. Leslie Clarke
Mr. J. D. Dotson
Mr. T. P. Putnam
Mr. A. D. Gould
All District Administrators
All Headquarters Audit Section Unit

M e m o r a n d u m**280.0784**

To: Mr. Glenn Bystrom

Date: July 10, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed Bob Nunes' memorandum of September 8, 1972 to Mr. --- ---.

We are in agreement with his conclusion, as follows:

Premium Sold By Oil Company To Dealer. A sale of premiums to independent dealers are sale for resale, pursuant to Regulation 1670(c), where the premiums are to be given to the dealer's customers only if the customers purchase other specified goods or services. These sales are sale for resale notwithstanding that the oil company's selling price to the dealer is less than 50% of cost.

When the service station dealer delivers a premium, together with a purchase of non-taxable labor, the selling price of the premium will be deemed to the cost of the premium to the oil company or the cost to the independent dealer whichever is the greater.

If the premium delivered is an exempt item (e.g., food product) and the goods required to be purchased are of a taxable nature (e.g., gasoline), the same rule would apply. The sales price of the exempt item would be deemed to be the cost of the premium to the oil company or the cost to the independent dealer whichever is the greater. The premium sales price is deducted from the sales price of the taxable item. If the dealer obtains tax reimbursement on a larger amount, he/she will be required to pay the excess tax reimbursement to the State.

In situations in which the premium is delivered in connection with a transaction involving both taxable and non-taxable charges (e.g., a lube job and an oil change), total consideration received must be allocated among three items (i.e., the premium, the oil change, and the lube job. 9/8/72.

Gary Jugum
By MB