STATE BOARD OF EQUALIZATION
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February 6, 1995

Ms. N--- J. F---
Tax Accountant
P---
XXXX --- --- ---
---, PA XXXXX

Re: SY -- XX-XXXXXX

Dear Ms. F---:

This is a follow-up to our letter dated August 25, 1994. The Board staff has reconsidered its position relative to the application of tax on antifreeze and tire disposal fees. It has also been brought to our attention that our August letter did not analyze how tax applies to P--- sales of new batteries where customers are required to return a worn battery or pay a fee in order to purchase the new battery. While our previous opinion is correct relative to purchases of reconditioned parts (including reconditioned batteries), a different analysis applies when customers purchase new batteries from your company. As such, this letter supersedes and replaces our letters to you dated October 18, 1990 and August 25, 1994 in their entirety.

Your July 7, 1994 letter asks:

"1. ROAD HAZARD WARRANTIES

> "The warranty is optional and is charged separately on the tire ticket. This warranty would begin 90 days after the sale and is in addition to the manufacturer's warranty. It only covers road hazards such as running over a nail or a piece of glass and has nothing to do with defects in the materials. When a customer comes in with a road hazard claim the fee would be prorated for the remaining percentage of tread left on the old tire, times the cost of replacing the tire. If the tire can be repaired it would be repaired without cost to the customer. In this instance would the road hazard warranty be subject to sales tax?"[1]

[1] This question was previously asked by P--- via letter dated September 25, 1990. A letter response was prepared by Tax Specialist R.A. Dodson dated October 18, 1990. Our present response does not differ from the responses given in our October 18, 1990 or August 25, 1994 letters.

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in California unless the sale is specifically exempted from taxation by statute. (Rev. & Tax. Code § 6051.) Charges for mandatory warranties are part of a retailer's gross receipts and are subject to sales tax whether or not they are separately stated. (Reg. 1655(c)(2).) Charges for optional warranties are not part of a retailer's gross receipts and are not taxable. (Business Taxes Law Guide Annots. 490.0580 (12/13/63), and 490.0700 (5/10/60).)

Sales and Use Tax Regulation 1655(c)(1) sets forth the distinction between mandatory and optional warranties:

> "A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller .... A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller, i.e., he is free to contract with anyone he chooses."

You state that "the [road hazard] warranty is optional and is charged separately on the tire ticket." My understanding of this statement is that a customer may purchase tires from P--- without also purchasing a warranty. Your warranties are therefore "optional warranties" within the meaning of Sales and Use Tax Regulation 1655(c)(1). As such, P--- charges to its customers for these optional warranties are not subject to tax.

Sales and Use Tax Regulation 1655(c)(3) explains the application of tax to the property used in the performance of the optional warranty:

> "The person obligated under an optional warranty contract to furnish parts, materials, and labor necessary to maintain the property is the consumer of the materials and parts furnished and tax applies to the sale of such items to him. If he purchased the property for resale, without tax paid on the purchase price, he must report and pay tax upon the cost of such property to him when he appropriates it to the fulfillment of the contract of warranty."

This means that P--- is the consumer of parts and materials furnished in the performance of the optional warranty and tax applies to the sale of such items to P--- , or to the use of such property. If P--- purchased the property for resale, or otherwise acquired the property without paying sales tax reimbursement or use tax, it must report and pay use tax on the cost of such property. Thus, when P--- provides its customer with a new tire under the optional warranty, P--- must report and pay tax on the cost of that portion of the tire covered by the warranty and report the pro-rata charge to its customer as a taxable sale.

"2. COMPANY IMPOSED TIRE AND ANTIFREEZE DISPOSAL FEE

"The fee will be .50 cents … per tire and $2.00 for antifreeze per radiator flush and will be charged separately on the sales invoice. We will only charge our customers who purchase tires from us and leave their old tires for disposal. The fee for the antifreeze will be charged only to customers when we flush out their radiators and we must dispose of the old antifreeze. What we are actually doing is recouping our costs to dispose of the Hazardous Materials. In these instances would the .50 cents a tire and $2.00 per radiator flush be subject to sales tax?"[2]

Our response to each of these disposal fees is separately set forth below.

Tire Disposal Fees

A retailer's taxable gross receipts include all amounts received with respect to a sale, with no deduction for the cost of the materials, service, or expenses of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.) Thus, unless there is a specific exclusion, charges for services which are part of the retail sale of tangible personal property, such as tires, are included in the taxable gross receipts, as are any other costs of the retailer which are passed on to the purchaser (even if those costs are separately itemized). On the other hand, charges that are completely unrelated to the sale of tangible personal property are not subject to sales tax.

In 1990, the Legislature adopted the California Tire Recycling Act. (Pub. Resources Code § 42860 et seq.) That act imposes a $0.25 per tire disposal fee on every person who leaves tires for disposal with a seller of new or used tires. The seller is required to collect the fee and remit it to the state, but may retain 10 percent of the fee as reimbursement for any costs associated with the collection of the fee. (Pub. Resources Code § 42885(a).)

If, prior to the adoption of the California Tire Recycling Act, a dealer made a retail sale of a tire and had charged a disposal fee which was regarded under the Sales and Use Tax Law as part of the sale, the disposal fee would have been a taxable part of the sale. Even with passage of the act, if a dealer of a tire makes a "tire disposal charge" which is regarded as part of the retail sale of a tire, the entire amount would be taxable except for that portion for which there is a basis for exclusion from the measure of tax. Since the $0.25 tire recycling fee is imposed on the purchaser by statute and not on the tire dealer, we do not consider the $0.25 as part of the dealer's taxable gross receipts. However, there is no statutory basis for excluding from the measure of tax the remaining $1.75 charged to the customer *when the charge is part of the sale of the tire*. Thus, the remaining issue to be resolved is when the disposal fee is regarded as part

[2] This question was previously asked by P--- via letter dated August 9, 1990. A letter response was prepared by Tax Specialist R.A. Dodson dated October 18, 1990. Our response in this letter, however, supersedes and replaces the responses contained in our August 9, 1990 and August 25, 1994 letters.

of the sale of the tire.

Since the same analysis applies in many repair shop situations (the replacement of a tire is a repair of the vehicle), I will first discuss the rules applicable to certain scenarios involving charges that might be made by a repair shop, and I will then apply those rules to the transactions in question here. In each of the scenarios, the repair shop performs repairs and itemizes charges for parts (including any charge for fabrication of parts) and labor (including, e.g., troubleshooting and installation, but excluding fabrication of parts). The repair shop also makes an additional charge for overhead expenses (there are many different designations used to itemize such charges). The charge for the parts is subject to tax and the charge for the labor is not subject to tax. (Reg. 1546(b)(1).) As in the transaction you present, whether the charge for overhead expenses is subject to tax depends on whether the charge is regarded as related to the sale of the parts, the providing of the labor, or both.

When the overhead charge made by the repair shop is related only to the sale of the parts, the entire charge is subject to tax (e.g., a charge to cover expenses for ordering, inventorying, and storing parts or for transportation of the parts to the repair shop). If, on the other hand, the charge were related solely to the nontaxable labor performed by the repair shop, then none of the charge would be taxable (e.g., a charge solely to cover expenses related to cleaning the oil remaining on the garage floor after draining oil from a car). The final possibility is that the charge, no matter how itemized on the bill to the customer, is actually related to all overhead expenses of the repair shop. We would regard the charge as related to all overhead expenses of the repair shop if the charge cannot be shown to be clearly related solely to nontaxable labor or solely to the taxable sale of tangible personal property. Under these circumstances, a portion of the charge is taxable and a portion of the charge is not taxable, prorated in the same ratio as the itemized taxable charges for parts bears to the itemized nontaxable charges for labor.

As we understand the facts in the transactions about which you inquire, P--- sells a tire and installs it onto the customer's vehicle. As part of the installation, P--- removes the customer's old tire and, unless the customer chooses to retain it, disposes the old tire. P--- makes a charge for the tire and for the installation, and makes a $0.50 charge for each tire itemized as a disposal fee unless the customer chooses to keep the old tires. Under these facts, where the customer pays the $0.50 charge only when disposing of the tire, we would not regard the charge as related entirely to the sale of the tire nor to all overhead expenses of P--- , but rather would regard the charge as part of the installation and disposal of the tire. Thus, under the facts of your question, none of the $0.50 charge imposed by P--- for tire disposal fees is taxable.

Antifreeze Disposal Fees

Like P--- tire disposal fee above, we regard an antifreeze disposal fee as an overhead charge related to the sale of parts, the providing of labor, or both. Tax applies to the entire fee if it exclusively relates to the sale of parts, or on a prorated amount of the fee (the ratio between the itemized charges for parts to the itemized charges for labor) if it relates to all overhead charges of the repair shop. Where the disposal fee is an overhead charge related only to nontaxable labor, sales tax does not apply.

You state that P--- only charges the $2.00 fee for the disposal of antifreeze when it flushes a customer's radiator and installs new antifreeze. Since customers pay this fee only when P--- disposes of the old antifreeze, we regard the charge as a part of nontaxable labor for draining the old antifreeze.

"3. CORE CHARGES

> "When a customer comes in and purchases either a starter or battery and does not give us their old starter or battery we would charge them $7.00. If the customer comes back in with the old part within a reasonable time period, we will refund the core charge to them. I would like to know whether the core charge is subject to sales tax at the time the starter or battery is purchased? And if the core charge is subject to sales tax, do we refund the sales tax along with the core charge when the customer comes back in for a refund?"

The amount of gross receipts received from the sale of reconditioned parts when a customer forfeits a core deposit unless the customer turns in a worn part for reconditioning is calculated differently than the amounts for your gross receipts received from your sales of new, non-reconditioned batteries.[3] For purposes of clarity, we have separately described the application of tax to both situations as well as P--- obligation to return sales tax reimbursement when a customer returns a worn part for refund of the core charge after the customer's purchase of a new battery or reconditioned part.

Reconditioned Parts

The application of tax on sales of reconditioned parts is discussed in Sales and Use Tax Regulation 1546(b)(4):

> "If the method of repairing or reconditioning certain tangible personal property involves commingling property delivered to a repairman or reconditioner with similar property so that the customer receives repaired or reconditioned property which may not be the identical property delivered to the repairman or reconditioner but which is exactly the same kind or property or derived from exactly the same kind of property as that so delivered, tax applies to the amount charged by the repairman or reconditioner for the repaired or reconditioned property."

[3] We assume that P--- does not sell used, non-reconditioned batteries nor require customers to turn-in (or forfeit a core deposit) a worn part for the purchase of a new part other than in instances involving the sales of new batteries. In the event this assumption is incorrect, the treatment of batteries sold as used (non-reconditioned) parts and the sale of new parts requiring a trade-in (or the forfeit of a core deposit) is the same as for new batteries as discussed below.

We apply this provision relative to the application of sales tax to core charges imposed by a reconditioner to ensure the return of a worn part by a customer as follows:

> "If the original transaction is clearly understood and designated to be an exchange, the tax will not apply to the amount of deposit placed with the retailer to insure delivery to him of the worn part, in the event that the customer does deliver the worn part to the retailer and receives a refund of the deposit. The amount of the deposit should, of course, be entered separately in the retailer's books as a deposit.
>
> "In the event that the customer does not deliver the worn part to the retailer pursuant to the exchange agreement, the transaction will be regarded as a straight sale of the reconditioned part.
>
> "In this event the retention of the deposit by the retailer will be regarded as an appropriation of the amount thereof to the payment of the retail sales price of the part, which will be regarded as the full amount charged by the retailer, including the amount originally received as a deposit. The tax will apply, in this case, to the full retail sales price." (Business Taxes Law Guide Annotation 315.0380 (1/19/50).)

This means that the amount of a core deposit collected in connection with the sale of a reconditioned part is included in the measure of sales tax if the core deposit is not refunded. Thus, in order to protect itself against owing sales tax without having obtained reimbursement, P--- may collect sales tax reimbursement from its customers on the core deposits it receives in connection with its sales of reconditioned parts. If a core is subsequently returned by the customer, P--- must refund the sales tax reimbursement it collected on the deposit, as explained in Business Taxes Law Guide Annotation 315.0400 (11/4/64; 9/29/89):

> "Auto parts stores may use, in a proper case, that portion of the Regulation 1546 which allows tax to be measured, in the case of an exchange of a worn part for a reconditioned part, by the cash received. Where a 'core deposit' is taken to insure that the worn part will be turned in after the reconditioned part replaces it in the car, tax reimbursement should be charged on the deposit to protect the retailer in case the worn part is not turned in and the deposit forfeited. In this case, the transaction is a straight cash sale. However, **tax reimbursement on the deposit must be returned to the customer with the deposit, otherwise it constitutes excessive tax reimbursement under Section 6901.5.**" (Emphasis added.)

Thus, when P--- sells a reconditioned part and a core deposit is refunded sometime after the sale, the amount of the core deposit is not taxable and any sales tax reimbursement collected with respect to that core deposit must be returned to the customer.

New Batteries

We assume that customers are required to provide P--- with an old battery or pay a fee for the value of an old battery when they purchase a new battery from your company. We regard this type of transaction as a trade-in of an old part towards the purchase of another battery. Sales tax applies to this transaction as described in Regulation 1654(b)(1):

> "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 for the merchandise traded in. Should, however, the board find that the allowance stated in the agreement is less than the fair market value, it shall be presumed that the allowance actually agreed upon is such market value."

This means that the trade-in value of an old battery must be included as part of the purchase price of a new battery where the trade-in is a condition of the sale. Thus, when P--- sells a new battery for $40 and requires its customer to trade-in an old battery valued at $7, the gross receipts from P--- sale consist of $47 (i.e., the $40 battery plus the $7 trade-in).

You state that some customers subsequently provide P--- with a battery trade-in after their purchase of a new battery. When this occurs, P--- returns the trade-in value of the worn battery to its customer. Sales tax reimbursement previously collected from this customer on the trade-in amount need **not** be added to P--- refund to its customer since the trade-in amount was included as part of the original selling price of the new battery. That is, the gross receipts from the original sale of the new battery consisted of the price of the new battery **plus** the trade-in value of the old battery. This means that the return of an old battery for refund of the trade-in amount does not result in a reduction to the original sales price of the new battery. Instead, the customer is regarded as having substituted the trade-in value of the old battery for an actual old battery. Since this substitution does not effect the original sales price of the new battery, P--- continues to owe sales tax on the original sales price. P--- is therefore not obligated to refund to its customer the sales tax reimbursement paid on the amount fixed as the value of the battery trade-in.

Illustration

The following three hypotheticals illustrate the differences in invoicing customers in situations involving the sale of new parts requiring a trade-in and reconditioned parts requiring a core exchange.[4] The first hypothetical represents the sale of new and reconditioned parts where worn parts are brought to P--- at the time of the sales:

[4] For ease of reference, our hypotheticals refer only to sales of new batteries and reconditioned starters both with a retail sales price of $40.00.

NEW PART		RECONDITIONED PART	
Sales Invoice		Sales Invoice	
New Battery	$40.00	Reconditioned Starter	$40.00
Value of Trade-In	7.00		
	$47.00	Sales Tax (7.75%)	3.10
Sales Tax (7.75%)	3.64		$43.10
	$50.64		
Trade-in Allowance	7.00		
	$43.64		

When a customer does not provide P--- with a worn part at the time of a purchase of a new or reconditioned part, the following hypothetical represents correct invoicing:

NEW PART		RECONDITIONED PART	
Sales Invoice		Sales Invoice	
New Battery	$40.00	Reconditioned Starter	$40.00
Value of Trade-In	7.00	Core Deposit	7.00
	$47.00		$47.00
Sales Tax (7.75%)	3.64	Sales Tax (7.75%)	3.64
	$50.64		$50.64

Finally, if a customer returns a worn part for a refund sometime after P--- sale of a new or reconditioned part, the following hypothetical represents correct invoicing:

NEW PART		RECONDITIONED PART	
Credit Memo		Credit Memo	
Worn battery trade-in allowance	$ 7.00	Reconditioned Starter core deposit	$ 7.00
		Sales Tax (7.75%)	.54
			$ 7.54

"4. STORE AND MANUFACTURER COUPONS

"I would like to know the taxability of store and manufacturers coupons? We do not offer double coupon sales. We receive a refund from the manufacturer on the manufacturer coupons."

As set forth above, California's sales tax is measured by the retailer's gross receipts from the retail sale of tangible personal property. (Rev. & Tax. Code § 6051.) Gross receipts do not include cash discounts allowed and taken on sales. (Rev. & Tax. Code § 6012(c).)

Your letter identifies two types of coupons presented by customers when purchasing tangible personal property. With a manufacturer's coupon, the retailer is reimbursed the face amount of the coupon by the coupon issuer. A store coupon is one in which the retailer receives no reimbursement from any third party. For example, when P--- sells a spark plug for $2.00 and accepts a $0.25 manufacturer's coupon towards its purchase, P--- would be paid $0.25 by the coupon issuer. The total amount P--- would receive for the purchase of this item would be $2.00, $1.75 from the purchaser and $0.25 from the coupon issuer. Thus, P--- taxable gross receipts from this sale would be $2.00. (Business Taxes Law Guide Annotation 295.0430 (5/9/73).)

When P--- sells a spark plug for $2.00 and accepts a $0.25 store coupon towards the purchase, P--- receives only $1.75 for the sale. The $0.25 deducted from the usual selling price of $2.00 is simply a discount offered by P--- . Since P--- never receives the amount of the discount, it is not part of its gross receipts and is not subject to tax. P---
may not, therefore, collect sales tax reimbursement from its customers on the amount of the discount coupons, but only on the amounts actually received by your company.

"5. LABOR, REPAIRS AND INSTALLATION

"We are in the business of repairing automobiles and installation of auto parts and accessories. Are these labor charges subject to sales tax?"

As set forth above, amounts received for labor or services used in installing or applying property sold are excluded from a retailers' gross receipts. (Rev. & Tax. Code § 6012(c)(3); see also Rev. & Tax. Code § 6011(c)(3).) This rule is explained in Sales and Use Tax Regulation 1546 as follows:

"(a) Charges for labor or services used in installing or applying the property sold are excluded from the measure of the tax. Such labor and services do not include the fabrication of property in place.

"(b)(1) If the retail value of the parts and materials furnished in connection with repair work is more than 10 percent of the total charge, or if the repairman makes a separate charge for such property, the repairman is the retailer and tax applies to the fair retail selling price of the property. (Fn. omitted.)

"If the retail value of the property is more than 10 percent of the total charge, the repairman must segregate on the invoices to his customers and in his records the fair retail selling price of the parts and materials from the charges for labor of repair, installation, or other services performed. (Fn. omitted.) "Total

charge" means the aggregate of the retail value of the parts and materials furnished or consumed in making the repairs, charges for installation, and charges for labor of repair or other services performed in making the repairs, including charges for in-plant or on-location handling, disassembly and reassembly. It does not include pick-up or delivery charges.

"If the retailer does not make a segregation, the retail selling price of the parts and materials will be determined by the board based on information available to it.

"(2) If the retail value of the parts and materials furnished in connection with the repair work is 10 percent or less of the total charge, as defined in (b)(1) above, and if no separate charge is made for such property, the repairman is the consumer of the property, and tax applies to the sale of the property to him. (Fn. omitted.)

"...."

Thus, P--- is the consumer of parts furnished in its performance of repair services under a lump sum contract if the retail value of the parts and materials furnished under the contract is not greater than 10 percent of the total charge. We assume, however, that P--- separately states its charges for parts and materials regardless of the value of parts and materials furnished in connection with its repair work.[5] As such, sales tax applies to P--- sale of such parts and materials but not to the repair labor performed by P--- .[6]

"6. FREIGHT

"Are charges for freight taxable?"

It is unclear whether you are asking if tax applies to transportation charges from P--- stores to its customers or whether freight charges billed to a customer for the delivery of goods to P--- stores are subject to tax. We assume that P--- is not engaged in the shipment of goods to its customers either through its own facilities or by mail, independent contract or common carrier. Our response is accordingly based on the application of sales tax to freight charges imposed by a manufacturer on P--- which is passed on to your customers.

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[5] Business and Professions Code section 9884.8 requires, among other things, that automotive repair dealers separately list service work and parts on the invoice, separately state the subtotal prices for service work and parts, not including sales tax, and separately state the sales tax, if any, applicable to each.

[6] A slightly different rule applies to the sale of retreading/recapping services or the sale of retreaded/recapped tires. These rules are set forth in Sales and Use Tax Regulation 1548, a copy of which is enclosed herein for your review.

A retailer's gross receipts from the retail sale of tangible personal property are subject to tax, with no deduction for transportation charges to the retailer which are passed to the customer. (Rev. & Tax. Code § 6012(a)(3).) This is true whether the charge is passed on in the form of a higher selling price or separately stated. Business Taxes Law Guide Sales and Use Tax Annotation 557.0620 (3/17/66) explains this rule as follows:

> "A retailer may not deduct the cost of transportation incurred in the shipment of goods to him for the purpose of making a subsequent sale and delivery even though reimbursement for this cost is separately billed to his customer."

This means that freight charges incurred by P--- for purposes of a subsequent sale cannot be deducted from P--- taxable gross receipts.

"7. STORAGE CHARGES

> "Sometimes automobiles will be left at our service area for long periods of time due to different reasons (e.g. the customer does not have the money to pay for the repairs), in these instances we would charge a per diem storage charge. Would these charges be subject to sales tax?"

Under these facts, storage charges are not regarded as taxable gross receipts.

"8. STATE INSPECTION AND EMISSION STICKERS

> "I would like to know if the labor to perform state and emission inspections is taxable. If so, if we charge the customer separately for the sticker would it be taxable?"

Labor charges are not subject to tax. (Rev. & Tax. Code §§ 6012(c)(3), 6011(c)(3); Reg. 1546.) We regard state and emission inspections as a sale of labor and therefore not subject to tax. We regard state and emission inspection certificates (stickers) as a record of the inspection and not as a sale of tangible personal property. As such, sales tax does not apply. If any repairs are performed by P--- as part of the inspection, tax applies in accordance with Sales and Use Tax Regulation 1546. (Please see our response to question 5 above.)

"9. BATTERY PROTECTION/WARRANTY SERVICE

"When a customer purchases a battery, they have the option of purchasing a battery protection service for $4.88. This service is originally performed when a new battery is installed, if in the future the customer needs this service performed again it will be done at no charge. The service consists of cleaning the battery terminals and posts, spraying the battery terminals to avoid corrosion and other protective services to increase the life of the battery and to keep it from corroding. I would like to know the taxability of this battery protection service."

It is unclear whether customers purchase this warranty service with a new battery to obtain immediate and future cleaning and protective services or whether the warranty service is in addition to a battery cleaning and protective service provided at the time of a battery sale. Charges for this service are taxable if purchase of the warranty is necessary to obtain the cleaning and protective service at the time of a battery purchase. (Rev. & Tax. Code § 6012.) If, however, the warranty service is in addition to a battery cleaning and protective service already included as part of the taxable sale of the battery, we consider the service to be an optional warranty subject to the rules set forth in our response to question 1 above.

We apologize for any inconvenience our October 18, 1990 and August 24, 1994 letters may have caused. If P--- refunded sales tax reimbursement on core charges returned to its customers purchasing new batteries in reasonable reliance on our previous letter when it was not otherwise obligated to do so, it will be relieved of its liability for that amount of sales tax. Hereafter, P--- is required to apply tax on its sales of new and reconditioned parts as set forth herein. P--- is also not required to report sales tax on its charges for antifreeze and tire disposal fees as set forth herein. Any sales tax reimbursement collected by P--- to date for these activities must be refunded to its customers or paid to the Board. If a customer now demands a refund of sales tax reimbursement paid on antifreeze or tire disposal fees which P--- paid to the Board, P--- may submit a claim for refund to the attention of the Refunds Section at the address above. (See Rev. & Tax. Code § 6901.5.) If a refund is granted, the overpayment will be refunded to P--- on the condition that it refunds the sales tax reimbursement to those customers who paid it. (Id.)

We trust this letter clarifies our previous correspondence to you. If you have any further questions, feel free to write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

Enclosure - Reg. 1548

cc: Out-of-State District Administrator - OH