

**STATE BOARD OF EQUALIZATION**

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August 16, 1995

Mr. R--- A. P---
Certified Public Accountant
XXXX --- Drive
P.O. Box XXX
--- ---, California XXXXX

Re: Your letter dated June 8, 1995

Dear Mr. P---:

This office has received your letter dated June 8, 1995 in which you state that you have a client who is in the retail mail order business. This client has retail stores in California but also operates a catalog mail order business selling to customers in every state. When an order is received by telephone or by mail at the client's California location, the merchandise is shipped directly to the customer by common carrier from a central warehouse located outside of California. A delivery charge, based uniformly on merchandise price and not on destination, is added to the purchase price and is separately stated. The catalog and order blanks do not state when title to the goods passes to the purchaser.

You state that this company has not charged its California customers California sales or use tax on the separately stated delivery charges that it has added on to the purchase price of the goods sold. Instead, it has reported and paid tax measured by the difference between the total delivery charges billed to its customers applicable to California shipments for the reporting period and the total cost for the delivery of those shipments as charged by the carrier for the same reporting period.

You ask if this company is properly reporting and paying tax on the separately stated delivery charges.

California Sales and Use Tax Regulation 1628(b)(2) provides, in part:

"When transportation is by facilities of the retailer or the property is sold for a delivered price, tax applies to the charges for transportation to the purchaser, unless (a) the transportation charges are separately stated; (b) are for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser; and (c) the transportation occurs after the sale of the property is made to the purchaser. When the sale occurs before the transportation to the purchaser commences, the tax does not apply to separately stated charges for the transportation. The amount that may be excluded from the measure of the tax cannot exceed a reasonable charge for transportation by facilities of the retailer or the cost of transportation by other than facilities of the retailer."

In this case, this company imposes a separately stated charge on its customers for transportation and the transportation is by carrier.

It is our opinion that the retailer may exclude the amount of the transportation charge that does not "exceed . . . the cost to the retailer of transportation by other than facilities of the retailer" (California Revenue and Taxation Code Sections 6011(c)(7) and 6012(c)(7). However, this retailer may not average out all of its sales for the reporting period and pay tax only on the difference between the total amount billed to its customers and the total amount of its transportation charges for the reporting period. For example, if the retailer charges \$10.00 for transportation on a \$100.00 sale, the transportation charges for these sales are excludable only as follows:

Sale 1. Price \$100.00 plus \$10.00 transportation charge. The actual cost of the transportation billed to the retailer is \$12.00. Only the \$10.00 is excludable.

Sale 2. Price \$100.00 plus \$10.00 transportation charge. The actual cost of the transportation is \$3.00. Only the \$3.00 actual cost is excludable as a nontaxable transportation charge.

The result of these two transactions is that the total sales the retailer should report on line 1 of the sales and use tax return should be \$220.00. The retailer is entitled to take a deduction of \$13.00 transportation charges.

If you require any additional information, please contact this office.

Very truly yours,

Thomas J. Cooke
Staff Counsel

TJC/cmm