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January 25, 1994

BURTON W. OLIVER
Executive Director

Mr. E--- D---
The B--- L--- Company
P.O. Box XXX
--- ---, CA XXXXX

Re: "Service Charge"
SR -- XX-XXXXXX

Dear Mr. D---:

This is in response to your letter sent by fax on December 2, 1993, in which you request our opinion as to the taxability of apparent delivery charges for food products. Your facts and issues are as follows with our analysis.

- "A.) In our business we need to recover the handling costs associated with delivery of the products we sell (including the cost of vehicle, gas, repairs, insurance, packaging and wages). we (sic) wish to do this by charging a premium over and above the sale price of the individual item. This premium would be based on a percentage of the total order, such as 10%. The premium could be called 'Service Charge'. THIS CHARGE IS NOT FOR WAITERS, TABLE SERVICE, OR any other SERVICE not mentioned above in this paragraph. Those types of services rarely occur in our business but when they do are billed as separate items on the invoice such as Wait staff .. 8 hr's @ 10.00 = \$100 (sic).
- A.1) If our invoices indicate a 'Service Charge' and our stated policy is that the 'Service Charge' covers the costs as noted above in paragraph A, would the 'Service Charge' portion of the bill be taxable?
- A.2) Would the use of the term 'Service Charge' for the purposes as noted herein change the taxability of any other items billed on the invoice. A specific example would be a cold sandwich. The cold sandwich is normally not taxed, would that item then be taxed if the term 'Service Charge' appears on the bill?
- A.3) If these terms would make an otherwise non-taxable item taxable, could I use a different term to not change the taxability status of that item. Such as 'Product Mark Up for Delivery Mark' or 'Delivery Charge' or 'Fee for Service'?"

Response

To avoid confusion with the term "service meals, foods and drinks" as described in Regulation 1603(h), your description of "service charge" more closely fits "transportation charges" or delivery charges as discussed in Sales and Use Tax Regulation 1628¹. Therefore, to avoid problems with customers and auditors, you may want to describe the charges as either delivery or transportation.

Regulation 1628(b)(2) states in pertinent part that:

"... when transportation is by facilities of the retailer or the property is sold for a delivered price, tax applies to 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. ..."

We assume the transportation occurs before the sale of the food is made to the purchaser. Therefore, tax will apply. The amount that may be excluded from the measure of tax cannot exceed a reasonable charge for transportation by your facilities. A 10 percent charge would appear to be reasonable. If, however, all of your sales are nontaxable such as cold sandwiches, the transportation charges would not be taxable. On the other hand, if all the sales are taxable, then the transportation charges are taxable. In the event that some of your sales are taxable such as carbonated beverages and other separately stated items are not taxable such as cold sandwiches, we recommend that a taxable delivery charge be added separately for all taxable items and separately for all non-taxable items. This would help to ensure that only the proper amount of tax is collected and ensure that the tax amount collected would be based on taxable delivery charges.

"B.) When an order is particularly small, such as for 5 or 6 people and/or it is being delivered a long distance the 'Service Charge' would not be enough to cover the cost of delivery. Since we try not to turn down orders we charge an additional delivery charge on those orders.

¹All further references to Regulations are to Sales and Use Tax Regulations.

B.1) If our invoices indicate a `Delivery Charge' or `Additional Delivery Charge' and our stated policy is that `Delivery Charge' covers the costs as noted above, would the `Delivery Charge' portion of the bill be taxable?"

Response

This is covered in the answer to "A". The amount may be excluded from the measure of the tax cannot exceed a reasonable charge for transportation by your facilities. If the additional delivery charge is reasonable, then it should receive the same treatment as the initial delivery charge.

"B.2) Would the use of either or both of the following terms on our invoice change an otherwise nontaxable item to a taxable item. For instance; if a cold sandwich is normally not taxed would that item become taxable if `Additional Delivery Charge' or `Delivery Charge' appears on the invoice?"

Response

No, the non-taxable item does not become taxable if "additional delivery charge" or "Delivery Charge" appears on the invoice.

Enclosed for your information are copies of Regulations 1602 and 1628. If you need anything further, please do not hesitate to write again.

Sincerely,

Carl J. Bessent
Staff Counsel

CJB/md

cc: --- --- - District Administrator