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**STATE BOARD OF EQUALIZATION**

December 5, 1990

G--- B. M---, Bookkeeper  
A--- P--- S---  
P.O. Box XXX  
---, CA XXXXX

Re: Forklift Charges  
SR -- XX-XXXXXX

Dear Ms. M---:

This is in response to your September 14, 1990 request for a legal opinion concerning the application of the California Sales and Use Tax Law to forklift charges. You indicated that A--- P--- S--- is in the wholesale building supply business, and often delivers supplies to its customers and, less often, unloads the delivered merchandise. When A--- P--- S--- does unload the merchandise, it charges a "forklift charge". Your question is whether these forklift charges are taxable.

Sales tax applies to a retailer's retail sale of tangible personal property in California. (Rev. & Tax. Code § 6051.) A retail sale in a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) It is presumed that all of a retailer's gross receipts are taxable retail sales until the contrary is established.

Although your letter refers to "forklift charges" made for unloading delivered merchandise to your customers, we presume that the charges are made for services provided by A--- P--- S--- employees in unloading merchandise upon delivery, whether a forklift is actually used or not. Contrary to information you may have previously received from Board personnel, such charges are not installation charges within the meaning of the Sales and Use Tax Law. Installation charges apply to labor expended in attaching or adapting the purchased property to, or for, a specified site. The Board's legal staff has previously determined that, where a charge is made for unloading property and title to the property does not pass until it is unloaded, that charge is handled the same as a charge for transportation prior to delivery and is includable in taxable gross receipts. (Business Taxes Law Guide Annotation 557.0680, 4/22/54; see also Tobi Transport, Inc. v. State Board of Equalization (1980) 104 Cal.App.3d 730, where the court upheld the Board's position that

charges for pumping cement at a customer's location were included in taxable transportation charges absent an agreement that title to the concrete passed to the customer prior to pumping.)

Under the Sales and Use Tax Law, separately stated charges for transportation are nontaxable, except that if delivery is by the vehicle of the seller, such charges are only nontaxable if title to the goods passes before delivery. Under Board Regulation 1628 ("Transportation Charges"), unless it is explicitly agreed that title is to pass at an earlier time, a sale occurs at the time and place at which the retailer "completes his performance with respect to the physical delivery of the property".

I assume that A--- P--- S--- delivers merchandise in its own vehicles, and collects sales tax reimbursement on transportation charges it makes to its customers. If this is accurate, then any additional "forklift charges" for unloading the merchandise upon delivery are also taxable.

If you wish to discuss this matter further, please feel free to contact me.

Very truly yours,

Janet Vining  
Tax Counsel

JV:wk  
2623C

Enclosures