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March 13, 1997

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Mr. REDACTED TEXT

Re: COMPANY A  
REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in response to your February 3, 1997 letter regarding the applicability of tax to transportation charges relating to the sale of tangible personal property. You state:

“COMPANY A directly ships products ordered by California customers from a warehouse located outside the state of California. A specific ‘shipping and handling’ charge is added to the price. The specific question is whether that ‘shipping and handling charge’ is to be added to the gross receipts that are subject to tax as a part of the sale of tangible personal property. The ‘shipping and handling’ combined charge is the same for all customers who place an order without regard to how close or far the customer is from the warehouse from which the products are shipped. It is unclear whether COMPANY A currently has the ability (at a reasonable expenditure of time and money) to determine the precise transportation charge that it would have incurred by the use of the U.S. Mail or a private carrier to transport the particular item of property. COMPANY A attempts to, in the aggregate, recover its cost for such transportation charges but does not do so on a customer by customer basis.

“We acknowledge that under the California sales and use tax law, the gross receipts from a retail sale are subject to tax unless specifically exempted by statute. Handling charges are also subject to tax and are included in gross receipts as services that are part of the sale of tangible personal property. The question is whether the law with respect to transportation charges is met such that no sales or use tax would be due.

“Specifically, Regulation 1628, ‘Transportation Charges,’ indicates that tax does not apply to transportation charges if they are ‘separately stated.’ However, they are treated as separately stated only if they are separately set forth in a

document such as the retailer's invoice which is issued contemporaneously with the sale. Here the transportation charges are not separately stated because they are set forth as a single charge for both 'shipping and handling.'

"However, Regulation 1628 goes on to say that the portion of the charge which represents 'actual postage or actual shipment' may be excluded under certain circumstances. That specific circumstance might apply 'even though such amounts are not affixed to, or noted on, the package.' While the Regulation makes clear that amounts 'may' be excluded from the measure of tax even though not noted on the package, it does not say that such amounts **must** be excluded from the measure of tax.

"Based on my understanding of the rules, the fact that COMPANY A is not able to break out, on a transaction by transaction basis, the actual postage or shipping charge means that it is not entitled to exclude a portion of the single 'shipping and handling' combined charge from the measure of tax. In order to be able to exclude a portion of the 'shipping and handling' charge, COMPANY A would have to know at the time a customer phones in his/her order precisely what the transportation charge would be to that customer's geographic location, in order to not charge tax to that customer for such amount. Since this information is not available to COMPANY A at that time, if ever, it is my belief that the only action available to COMPANY A is to continue to collect sales and use tax on the entire gross receipts, including the entire shipping and handling charge. Please confirm that this analysis is correct."

Based on the facts provided in your letter, we agree that COMPANY A's charges for "shipping and handling" may not be excluded from the measure of tax. California imposes a sales tax on retailers, measured by gross receipts, for retail sales of tangible personal property in this state. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code section 6201 imposes a use tax on the storage, use, or other consumption in this state, measured by the sales price. "Gross receipts" and "sales price" mean the total amount of the sale without any deduction on account of the cost of materials used, labor or service cost, or the cost of transportation of the property, unless an exclusion applies. (Rev. & Tax. Code §§ 6011, 6012.)

Tax does not apply to "separately stated" charges for transportation of tangible personal property from the retailer's place of business, or other point from which shipment is made "directly to the purchaser," provided the transportation is by other than facilities of the retailer, such as by United States mail, independent contract or common carrier and provided the property is not sold for a "delivered price." (Rev. & Tax. Code §§ 6011, 6012; Reg. 1628(a).) Transportation charges are separately stated only if they are separately set forth in the contract for sale or in a document reflecting that contract, issued contemporaneously with the sale, such as the retailer's invoice. (Reg. 1628(a).) In certain circumstances, charges for postage may be excluded from the measure of tax where the charge is referred to as "postage and handling." (Reg. 1628(a).) However, the retailer may only exclude the actual cost of the postage. (Id.) To be entitled to the exclusion, the retailer must retain records showing the actual cost of transportation for each transaction. (BTLG Annot. 557.0005 (7/24/91).) In other words, if a retailer labels a charge as "postage and handling,"

the retailer may not exclude the postage charges from tax unless the retailer maintains records showing the amount of postage for each individual transaction.

Since you note that COMPANY A does not maintain records showing the actual amount of postage or shipping for each individual transaction, COMPANY A cannot exclude the charge for postage or shipping from tax. Rather, tax applies to COMPANY A's total sales price including charges for "shipping and handling."

Please write again if you have other questions.

Very truly yours,

Charlotte Chyr  
Tax Counsel

CC:cl

cc: Out-of-State District Administrator