

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
916/445-6493

September 28, 1984

Mr. S--- H---  
Vice President  
W--- C--- R--- P---  
XXXXX --- --- Road  
---, CA XXXXX

Dear Mr. H---:

This is in reply to your letter of August 7, 1984. Your inquiry concerns the correct application of tax to transportation charges.

We understand that your company, W--- C--- R--- P--- ("W---") is a Division of H--- E---, Inc. W--- is in the business of selling aggregate rock base to the public F.O.B. their plant site. In some cases, W--- delivers the purchased materials to the customer using their own trucks or, alternately, transportation is arranged through a third party common carrier. You indicate that prior to delivery W--- requires the customer to sign a form which states the following:

"I/we the customer are aware that title to the material purchased passes at the point of origin."

You ask whether tax applies to the freight charges if the customer signs this form prior to the time of delivery.

Regulation 1628(a) provides that in the case of a sale, tax does not apply to separately stated charges for transportation of property from the retailer's place of business or other point from which delivery is made directly to the purchaser, provided the transportation is by other than facilities of the retailer, i.e., by independent contract or common carrier. The place where the sale occurs, i.e., title passes to the customer, is immaterial, except when the property is sold for a delivered price or the transportation is by facilities of the retailer.

Regulation 1628(b)(3)(B) provides that when transportation is by facilities of the retailer or the property is sold for a delivered price, the sale occurs at the time and place at which the retailer completes his performance with reference to the physical delivery of the property, unless the parties "explicitly agreed that title is to pass at a prior time." It is our position that when the retailer uses its own facilities to deliver the property, title passes when the property is delivered to the

purchaser at the destination point, unless there exists an explicit written agreement executed prior to the delivery that title is to pass at some other time.

Subject to the modification described below, it is our opinion that the statement signed by W---' customers is sufficient to show the existence of an explicit agreement between W--- and its customers which provides for the sale and transfer of title of the purchased goods to the buyer prior to delivery. Instead of using the term "point of origin," however, the statement signed by the customer should be modified to clearly indicate the place where title passes to the customer, e.g., at the seller's plant.

Therefore, where W--- and their customers effectively transfer title to the purchased goods prior to shipment by executing the above-described statement, separately stated charges for transportation will not be subject to tax, provided such charges are for transportation from W---'s plant site directly to the purchaser.

If you have any further questions concerning this matter, please write this office.

Very truly yours,

Charles J. Graziano  
Tax Counsel

CJG:ao

bc: --- – District Administrator