

**STATE BOARD OF EQUALIZATION**

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Executive Director

May 15, 1997

Mr. J--- M. C---
Vice President Finance
C--- R---
XX --- Avenue
---, CA XXXXX

Dear Mr. C---:

This is in response to your letter of May 2, 1997.

You have requested our opinion in regard to a "title clause" you intend to print on shipping documents to buyers of your equipment and supply items.

We understand that C--- R- sells small copiers, plotters and consumables to end users, mainly within a 30 mile radius of your warehouse. It is your intention, and the intention of your buyers, that title is to pass at the warehouse, i.e. prior to shipment.

The customer has a choice for transportation from your warehouse to their location. They can ask you to ship by a third party carrier, pick up themselves, or have you deliver a product in your own delivery vehicles. If you deliver, a nominal charge is added to your invoice. Transportation is to occur after the sale of the property is made to the purchaser and is separately stated on the delivery invoice.

You want to state correctly the title clause on the deliver invoice, so that the transportation charges are not subject to tax. You have asked us if any or all of the following four clauses would be acceptable to the Board as a "title clause" for purposes of excluding your transportation charge from sales tax:

1. "Title: passes FOB warehouse"
2. "Title: passes prior to shipment"
3. "Title: to buyer FOB warehouse"
4. "Title: to buyer prior to shipment"

Clause 2 and Clause 4 will accomplish your purpose. Your problem occurs when you deliver by your own trucks. Only Clause 2 and Clause 4 establish that in that circumstance title of the property passes to the buyer prior to shipment. The FOB clauses are sufficient to pass title when delivery is by a third party carrier, but they are not sufficient when delivery is by your own delivery vehicles. In order to accurately reflect the agreement between you and your buyers that title is to pass to the buyer prior to shipment in all cases, you should use Clause 2 or Clause 4. Clause 4 is preferable, because it is more explicit, but Clause 2 is sufficient.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

bc: Mr. David H. Levine
Mr. Ronald L. Dick
Ms. Candice McCanne