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To: Mr. Glenn Bystrom

May 20, 1996


From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed D. F. Brady's memorandum of December 3, 1980 to

We are in agreement with his conclusion, as follows:

Local tax Allocation - Check Printing Charges. Under certain specific conditions, a bank can avoid being the retailer of checks sold to its depositors. When those conditions have been met, the check printer is the retailer and the local tax should be allocated to the taxing jurisdiction in which the printer is located. If the printer does not have a place of business in California, the local tax should be allocated to the county into which the checks are shipped. If the bank is the retailer, the local tax should be allocated to the jurisdiction in which the bank's branch at which the checks have been ordered is located. 12/3/80



Telephone (916) 445-0387

December 3, 1980

Gentlemen:

This is in reply to your letter dated October 15, 1980. In that letter, you requested approval of the wording of a proposed statement to be given in writing by a bank to bank customers who wish to purchase checks. The statement proposed is:

"(a) the bank is not selling checks to its customers; (b) as a convenience to its customers the bank will submit an order from the customer for personalised checks to the printer named on the face of the order; (c) if the printer accepts the order, it will mail the checks directly to the customer or to the customer in care of the bank; (d) the printer will submit its statement for the checks plus applicable sales tax and transportation charges to the bank; (e) the bank will pay the amount as billed and charge the amount to the customer's account; (f) similar procedures will be followed in regard to all subsequent reorders of checks; and (g) in all instances the printer is the retailer of the checks and is responsible for the printing of the checks in accordance with the customer's order."

If such a statement is given to bank customers when the depositor places the order or reorder, and the bank's subsequent actions are in accord with such a role, we will consider the role of the bank to be other than that of seller of the checks. I understand that banks consider this role not that of agent of the customer, but rather as some other intermediary status. The seller (retailer) of the checks identified on the order. The bank will be viewed as acting on behalf of its customer.

A question was raised recently by some banks as to the effect on the bank's role of an "up-charge", an increase over the amount charged by the printer when the bank charges the customer's account. If such an increase is not separately stated to the customer and identified to the customer as a "bank service charge", or similar fee, the bank will be considered as the retailer of the checks. This will be true despite the providing of the statement quoted above to the customer. Passing on the exact amounts of the printer's charges with no "up-charge" is compatible with the role of non-retailer. So is the charging by the bank of a separately stated and identified service charge. But simply charging the customer a greater unsegregated amount than that charged by the printer is indicative that the bank is the retailer.

Further, it is important that, to be excluded from the measure of the tax, charges for sales tax reimbursement and delivery charges be separately stated to the customer regardless of who is the retailer. If the customer sees only a lump-sum charge, that charge is totally taxable. If the lump-sum charge is identified to the customer as "tax included", the lump sum may be divided by 1.06 (at a 6% tax rate) to determine the measure of tax. Delivery charges which would otherwise be exempt will not be exempt unless separately stated to the customer.

Your letter mentioned an assumption that "substantial compliance" with the proposed statement would be acceptable to establish a bank's role as other than that of retailer. I must caution you that strict compliance is what will be required. A bank wishing to be other than the retailer, but to use different language, or to act in a manner inconsistent with the proposed statement, should present its plan to me for consideration before adopting the different approach.

Finally, if an out-of-state printer is to be the retailer of checks under the proposed plan, that printer should be aware that the bank will be viewed as a representative of the printer, the printer thereby being considered as being "engaged in business" in California pursuant to Regulation 1683(b) (copy enclosed). The printer will then be required to collect the applicable use tax pursuant to Regulation 1684 (copy enclosed).

If you have questions on any of this, please contact me.

Very truly yours,

D. F. Brady

Principal Tax Auditor

DFB:j