

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA

May 15, 1970

Mr. R. P. K---  
Assistant Manager  
B--- R--- Company, Inc.  
P. O. Box XXXX  
---, CA XXXXX

Re: SZ --- XX-XXXXXX  
TR --- XX-XXXXXX

Dear Mr. K---a:

This is in response to your letter dated April 20, 1970, addressed to the attention of Mr. T. P. Putnam in which you request clarification of ruling 58.

We understand that you are in the rock, sand and gravel business and deliver your own product the bulk of which is sold F.O.B. jobsite for a delivered price.

You specifically question the interpretation of ruling 58(d), Determination of Place of Passage of Title. It is your interpretation that if a customer submits a purchase order clearly stating that he is taking possession prior to delivery, the delivery charges would be exempt from sales tax.

Such an interpretation is inaccurate.

Paragraph (d) of the ruling attempts to make specific the requirements of substantiation of the intention of the parties as to the place where title to the property passes to the purchaser. While the place of passage of title is one of the factors to be considered in the determination of whether or not the tax applies to delivery charges made in connection with property sold for a delivered price or where delivery is by the facilities of the retailer, paragraph (d) does not, however, govern the taxability of delivery charges.

When property is sold for a delivered price, the tax will not apply to the charges for transportation provided, (1) title to the property passes to the purchaser prior to the occurrence of the transportation for which the charges are made, and (2) the charges are separately stated, and (3) are for transportation from the retailer's place of business or other point from which shipment is made directly to a place specified by the purchaser (ruling 58(c)).

The above three requirements must be met in order for the delivery charges to be exempt.

The same requirements apply in the case of delivery by facilities of the retailer (ruling 58(b)).

Where the purchase order, which normally is issued prior to the transportation for which the charge in question takes place, contains a statement of title passage which constitutes a provision of the contract of sale it satisfies the requirement of ruling 58(d) with respect to evidence of point of title passage. However, in order for the transportation charges to be exempt the requirements of ruling 58(b) or (c) outlined above, also must be satisfied.

As a further point, if it is the intention of the parties that title pass prior to delivery, your delivery term, "F.O.B. Jobsite" is inconsistent with such intention.

We understand that presently your products are sold for a delivered price which is the basis for the sales tax. We assume that delivery charges are not separately stated. In the event that you change your procedure to show separately stated delivery charges, and the deliveries are by your own facilities you, no doubt, are aware that you will incur liability for the transportation tax. Our files indicate that you have been issued a transportation tax permit. (Transportation Tax ruling 1415 enclosed for your reference.)

Should you have any further questions, feel free to write.

Very truly yours,

Joseph Manarolla  
Tax Counsel

JM:smb  
Enclosure

bc: --- --- – District Administrator