

# Memorandum

**557.0449**

To: District Principal Auditors

Date: August 13, 1987

From: Glenn A. Bystrom  
Principal Tax Auditor

Subject: Regulations 1541 and 1628 – Passage of Title

Recently the Board heard several cases involving special printing aids and delivery charges where the time of passage of title was an important factor in determining what portion of the charges were subject to the tax. The regulations require that there be an explicit agreement between the parties that title passes to the purchaser prior to use of the special printing aids by the printer and prior to transportation of the property by facilities of the retailer. In the audits before the Board, there were no contracts or purchase orders available which explicitly passed title prior to use or transportation. The audit staff determined in the audits involving printers that sales to the printers of special printing aids were not exempt as sales for resale. In the audits involving transportation, it was determined that title passed when the property was delivered. Section 2401 of the Commercial Code provides that title passes upon completion of the physical delivery of the goods unless the parties explicitly have agreed that title passes at some other time. The petitioners argued that because of their repeated dealings with certain customers, title clauses were not expressed in writing until the sales invoice was prepared. The Board ruled that all transactions be allowed as exempt for those sales made to customers where a title statement appeared on the invoice.

Following are guidelines which are to be followed by the audit staff in future audits which involve these issues. In general, we should accept statements on the invoice as evidence of a confirmation that an explicit oral agreement was entered into prior to the sale. When there is a question as to time of title passage, we will look to the intent and the practice of the parties involved.

Regulation 1541 – The application of tax to the sales and use of special printing aids remains as outlined in Regulation 1541, paragraph (e). If special printing aids are separately stated on the sales invoice, it will be presumed they are sold prior to use. If a taxpayer does not separately bill the special printing aids to the customer but has printed on sales invoices a statement to the effect that title to the special printing aids passes at the taxpayer's place of business, we will accept this

as being within the meaning of Section 2401 of the Commercial Code and as an indication that there is an explicit agreement passing title at some time other than physical delivery. The tax status of the printed matter will not affect the tax status of the special printing aids; e.g., if the printed matter is shipped out of state, the sale of the special printing aids involved are taxable as a sale for use in California. If tax is not charged on the printed matter and the special printing aids are not separately stated, the sales price of the special printing aids will be determined as a percentage of the total sale.

Whenever a specific resale certificate for printing aids is accepted in good faith by the printed, auditors should continue to prepare a form BT-1164 to be placed in the purchaser's file for use in future audits of the purchaser.

Regulation 1628 – When there is a question as to when title passes involving transportation charges, again the intent and the practice of the parties involved will govern. To clarify Regulation 1628, paragraph (b)(2), if the taxpayer has a statement on the sales invoices that title to the goods passes prior to transportation, we will consider this to be proof that there was an explicit agreement under Section 2401 of the Commercial Code that title did pass prior to shipment.

If you have any questions, please contact me.

GAB:gjm  
0049X

cc: Mr. R. Nunes  
Mr. G. Jugum  
Mr. P.K. Taylor  
Headquarters Audit Supervisors

# Memorandum

**557.0449**

To: Mr. Glenn Bystrom

Date: July 10, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed your memorandum of August 13, 1987 to District Principal Auditors.

We are in agreement with his conclusion, as follows:

**Passage of Title – Facilities of Retailer.** If a taxpayer has a statement on the sales invoices that title to the goods passes prior to transportation, the Board will consider this to be proof that there was an explicit oral agreement entered into prior to the sale. 8/13/87

Gary Jugum  
By MB