

557.0573

## Memorandum

To: Vic Anderson, Supervisor  
Special Projects Team – MIC: 40

Date: August 1, 2003

From: John Abbott  
Tax Counsel IV – MIC: 82

Subject: Stacking and Spreading Charges – Services Part of Sale

In your March 10, 2003, memorandum to Assistant Chief Counsel Janice Thurston, you wrote:

“The Sales and Use Tax Division would like to provide audit staff with examples of the application of tax to stacking and spreading charges. We would like the Legal Division to review our examples and provide an opinion intended for annotation. In addition to the following examples, please provide a general statement regarding the proper application of tax with respect to stacking and spreading charges.

“Please assume in all cases that the retailer’s charges for the tangible personal property sold is subject to sales tax. Also, please assume the delivery charges, including unloading charges, are taxable either because the retailer uses its own trucks and there is not [a] title clause passing title at the place of shipment, or because the retailer uses a common carrier and the delivery terms are F.O.B. place of delivery.

“Example 1

“Firewood Company sells loads of firewood but will not sell the product unless the customer also purchases delivery and stacking services. Firewood, delivery and stacking charges are all separately stated on the sales invoice.

**“Tax Application**

“The charge for stacking is taxable under subdivision (b)(1) of section 6012 as a service that is part of the sale, whether separately stated or not.

“Example 2

“Hay Seller Company sells bales of hay. They will sell the hay without delivery and stacking services but will not deliver the product unless the customer also purchases the stacking services.

**“Tax Application**

“Whether separately stated or not, the charge for stacking services is taxable under subdivision (b)(1) of section 6012 as a service part of the sale.

“Example 3

“Wallboard Corporation will sell, deliver and stack wallboard. Wallboard Corporation does not require the customer to purchase stacking. When the stacking service is purchased the charge is not separately stated from the charge for transportation.

**“Tax Application**

“The stacking charge will be treated as part of the taxable transportation charge pursuant to Regulation 1628(b)(2).

“Example 4

“Roofing Supply Company sells and delivers roofing materials. They will also spread the roofing materials for an additional charge. The charge for the spreading is optional and is separately stated.

**“Tax Application**

“The charge for the spreading is not taxable since it is an optional charge. It would not matter if the product actually comes to rest at the curb prior to the spreading because the charge for spreading is for the stated activity and not for unloading. The charge for unloading is included in the transportation charge, which is generally subject to tax pursuant to Regulation 1628(b).”

Background

Revenue and Taxation Code section 6012, the measure of sales tax, provides in part:

“(a) ‘Gross receipts’ mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

¶...¶

“(3) The cost of transportation of the property, except as excluded by other provisions of this section.

¶...¶

“(b) The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

¶...¶

“(c) ‘Gross receipts’ do not include any of the following:

“(7) Separately stated charges for transportation from the retailer’s place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer

of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.” (See also California Code of Regulations, Title 18, section (regulation) 1628, subdivision (b)(2).)

#### Discussion

Example 1. You are correct that the Firewood Company’s stacking charges are included in gross receipts as services that are part of the sale of the firewood. The retailer requires its customers to purchase the service of stacking the firewood as a condition of the sale of the firewood. For sales and use tax purposes, it is irrelevant whether the retailer separately states the charges for a mandatory service. (Rev. & Tax. Code, §6012(b)(1).) We do not regard separately stated charges for stacking services as a part of transportation services. When the retailer transports firewood, the transportation has come to an end when the retailer unloads the firewood, not when the retailer stacks it for the customer. On the other hand, if the retailer had not made a separate charge for its stacking services, and instead had included these services in its transportation charges, then our opinion would be that the retailer has treated its stacking services as part of its transportation services.

Example 2. We agree with your conclusion that the stacking services are subject to tax, but the reason for our opinion depends on whether the Hay Seller Company separately states its charges for stacking services. If it does not separately state these charges, then we would view the retailer’s stacking services as part of its transportation charges, which under your assumed facts are subject to tax. (Rev. & Tax. Code, § 6012(c)(7).) If it does separately state the charges for stacking services, then the charges would be services part of the sale of the hay. (Rev. & Tax. Code, §6012(b)(1).) Although the purchaser could have bought the hay without either transportation services or stacking services, nevertheless when it purchases taxable transportation services, it also purchases the stacking services as well. Please note that if the transportation charges had been nontaxable, then the stacking services would have also been nontaxable, since the optional stacking services would have followed the sale of the hay, and would not have been services part of the sale of the hay.

Example 3. You are correct that the Wallboard Corporation’s charges for stacking services are part of its transportation services and are subject to tax under your assumed facts. When the retailer does not separately state its charges for this service apart from its transportation charges, our opinion is that the retailer regards its stacking services as part of its transportation services. (Rev. & Tax. Code, § 6012(c)(7).) We no longer think that annotation 557.0580 [4/22/88] accurately interprets the application of tax with respect to wallboard spreading. It is irrelevant whether the wallboard comes to rest before spreading, or whether the spreading is regarded as a batch process. The relevant circumstances are whether the retailer has made the service of wallboard spreading an optional or a mandatory service part of the sale of

the wallboard, or has included this charge in its transportation charges. We will ask that this annotation be deleted.

Example 4. You are correct that when the Roofing Supply Company offers an optional service of spreading roofing materials, and makes a separate charge for this service, it is not a service part of the sale of the roofing materials and is not subject to tax. (Rev. & Tax. Code, § 6012(b)(1).) This would be true whether or not the retailer's transportation charges would be subject to tax.

JA:sw

cc: Ms. Charlotte Paliani (MIC: 92)  
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Mr. James Kuhl (MIC: 40)  
Mr. David Rosenthal (MIC: 50) [Please annotate this memo and delete annotation 557.0580]