

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
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December 16, 1991

R--- E. M---  
Certified Public Accountant  
XXXX --- --- Avenue  
--- ---, CA XXXXX

Re: R--- E. & D--- D. F---  
SR -- XX-XXXXXX  
Exchange values

Dear Mr. M---:

This is in response to your letter of November 15, 1991, requesting our opinion with respect to the appropriate method of establishing the value for sales and use tax purposes of tangible personal property transferred pursuant to Internal Revenue Code Section 1031. You presented the issue as follows:

“Our question centers on the basis for sales tax purposes of tangible personal property transferred pursuant to the exchange. At the time of the exchange, the three readily ascertainable values for the equipment are original cost, net book value and exchange value. Which of these three values should be used when applying sales and use tax to the transaction?”

Sales and use Tax – General Discussion

Except to the extent specifically excluded or exempted by statute, the Sales and Use Tax Law, California Revenue and Taxation Code (Section 6001 et seq.) imposes sales or use tax on the gross receipts from the retail sale of all tangible personal property sold or purchased for use in this state. (Sections 6051 and 6201). (All statutory citations are to the California Revenue and Taxation Code, unless otherwise noted herein.)

Exchange

An exchange is a sale pursuant to section 6006(a) which provides:

“‘Sale’ means

(a) any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. ‘Transfer of possession’ includes only transactions found by the board to be in lieu of a transfer of title, exchange or barter.”

Gross Receipts

“Gross Receipts” is an all-encompassing concept. Except to the extent specifically excluded or exempted by statute, all gross receipts from the retail sale of tangible personal property sold or purchased for use in this state are subject to sales or use tax.

Section 6012 provides in relevant part:

“(a) ‘Gross receipts’ means the total amount of the sale or lease or rental price, as the case may be, of the retail sales or retailers, valued in money, whether received in money or otherwise....

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

...(3) Any amount for which credit is allowed by the seller to the purchaser....”

In this case, it is our opinion that the amount of taxable gross receipts would be determined by the realistic exchange value as negotiated by the parties in an arms length transaction. This is the “amount for which credit is allowed by the seller to the purchaser” pursuant to Section 6012(b)(3).

If you have any further questions, please do not hesitate to write to us again.

Cordially,

Victoria Lani Arena  
Tax Counsel

VLM:es