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September 20, 1994

BURTON W. OLIVER
 Executive Director

Mr. [J]
 [O]
 Certified Public Accountants
 XXX --- ---, Suite XXX
 --- ---, CA XXXXX

Re: Unidentified Taxpayer

Dear Mr. [J]:

This is in response to your letter dated July 11, 1994 regarding the application of sales tax to transactions involving cash discounts to customers and rebates from manufacturers.

You ask how tax applies to the following scenario:

“Product is purchased for resale (ex-tax) from distributor (A) for \$29,000.

“Product is subsequently sold by seller (B) to customer (C) as follows:

Gross sale price	\$28,000
Cash discount	<u>(2,800)</u>
Net sale price	\$25,200

“Sales tax is charged to customer (C) based upon net sale price of \$25,200.

“The customer's old product is taken upon sale of new product and under an incentive program with the manufacturer, is sent to the manufacturer who subsequently forwards a rebate of \$5,000 to the seller (B).”

Retail sales of tangible personal property in California are subject to sales tax, which is measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.)

Taxable gross receipts include the total amount of the retail sale, valued in money, whether received in money or otherwise. (Rev. & Tax. Code § 6012(a).) However, gross receipts do not include cash discounts allowed and taken on sales. (Rev. & Tax. Code § 6012(c)(1).) In your example, the customer has contracted to pay a certain sum of money plus transfer the old product as consideration for acquiring the new product. Taxable gross receipts from this sale include the fair market value of the old product. As described in your letter, the value of the old product is \$5,000, and that amount must be included in the seller's taxable gross receipts. On the other hand, since the seller does not receive the amount of the cash discount from the customer, the cash discount amount is not part of the seller's gross receipts with regard to its sale to the customer. Thus, under the facts in your scenario, the seller has received \$30,200, and that total is the correct measure of tax.

The sales tax is imposed upon the retailer, but the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) Under your scenario, even if the purchaser has paid sales tax reimbursement on \$25,200, the seller still owes tax on \$30,200. If the contract provides for sales tax reimbursement, the seller can collect reimbursement from the customer measured by an amount up to, but not over, \$30,200.

If you have any further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: San Jose District Administrator