

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION - MIC: 82
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Executive Director

September 25, 1995

Ms. C--- L---
Manager - State & Local Taxes
Z--- Corporation
P.O. Box XXXXXX
I---, --- XXXXX-XXXX

Re: SC --- XX-XXXXXX

Dear Ms. L---:

Your letter dated June 26, 19XX was referred to the Legal Division on August 3, 19XX for a response. You ask how tax applies on sales of merchandise to employees who receive various discounts from Z--- Corporation ("Z---").

You state:

- “• Employees will receive a 25 percent discount in the store at the time of the sale.
- “• Employees will mail their sales receipts to Corporate Headquarters for additional discounts.
- “• The additional discount calculated by Corporate Headquarters will be the difference between the price paid in the store and the cost of the merchandise purchased plus an additional percentage.
- “• Corporate Headquarters will issue a check to the employee for the additional discount.”

You ask two separate questions based on the above facts. For purposes of clarity, we have separately responded to each of your questions below.

“• Is the corporate headquarters portion of the discount deductible from the basis subject to sales tax?”

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempted by statute. (Rev. & Tax. Code § 6051.)¹ A retailer's gross receipts include all amounts received with respect to a sale, with no deduction for the cost of the materials, service, or expenses of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.) Gross receipts do not include cash discounts allowed and taken on sales of tangible personal property. (Rev. & Tax. Code §§ 6012(c)(1), 6011(c)(1).)

Z--- employees receive a 25 percent discount at the time of their purchase of merchandise from your company. This discount is not part of Z---'s gross receipts from the sale of the merchandise since, we assume, Z--- never receives any amount of this discount from its employees. Z--- may not, therefore, collect any sales tax reimbursement from its employees on the amount of the 25 percent discount, but instead may only collect tax reimbursement on the amounts actually received by Z--- at the time of the sale. That is, Z--- may collect sales tax reimbursement from its employees measured by the sales price of the merchandise less the 25 percent discount.

You state that employees thereafter mail their sales receipts to Z---'s corporate headquarters in order to obtain an additional discount in the form of a check from Z--- to the employee. You state that this additional discount consists of the difference between the price paid in the store by the employee and the actual cost of the merchandise plus an additional percentage. We understand that the amount of additional discount provided by Z--- represents a deduction in the sales price of the specific merchandise actually purchased by the employee and that the discount is not a rebate or discount of amounts to that employee based on sales by Z--- to third parties. (Cf., Business Taxes Law Guide Annots. 295.0960 (10/15/65) (patronage dividends are not deductible from taxable gross receipts); 295.1000 (11/20/64) (refunds based on a percentage of group sales are not a reduction of taxable gross receipts).) Under these facts, the additional discount provided by Z--- is also not part of its taxable gross receipts from the sale of merchandise to its employees. This means that Z--- is only required to report and pay tax on the gross receipts from its sales to its employees measured by the sales price of the merchandise less the total of the discounts, that is, the 25 percent discount plus any subsequent discount actually given to that employee by Z---. If Z--- previously reported and paid tax to this Board measured by a greater amount (i.e., the sales price of the merchandise to the employee less only the 25 percent discount), it is entitled to a refund as discussed below.

¹ This tax is imposed on the retailer who may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code § 1656.1.)

“• Is the sales tax on the corporate headquarters portion of the discount refundable to our employees?”

Amounts represented to and paid by a customer constituting reimbursement for sales tax computed on an amount that is either not taxable or in excess of an amount that is taxable is excess tax reimbursement. (Rev. & Tax. Code § 6901.5; Reg. 1700(b)(1).) When excess tax is collected, the retailer must refund the excess tax to the customer from which it collected it, or remit such amounts to the Board. (Rev. & Tax. Code § 6901.5; Reg. 1700(b)(2).)

As set forth above, the additional discount provided by Z--- above the initial 25 percent discount is not included in Z---'s taxable gross receipts from the sale of merchandise to the employee. If Z--- previously reported and paid tax to this Board measured by amounts subsequently refunded to the employee in the manner discussed above, Z--- may submit a claim for refund to the Board in letter form. (See Rev. & Tax. Code § 6904.) The letter should specify the amount of the claim, the relevant dates, the basis for the claim, and should be accompanied by a copy of this letter. Please note, however, that claims for refunds must be made within three years from the last day of the month following the close of the quarterly period for which the overpayment was made. (Rev. & Tax. Code § 6902(a)(1).) Any such claim should be sent to:

Board of Equalization
450 N Street, MIC: 39
P.O. Box 942879
Sacramento, CA 94279-0039
ATTN: Audit Review and Refunds Section

A refund of overpaid tax would only be granted if your company refunds this amount to those customers who paid it. (Rev. & Tax. Code § 6901.5)

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:cl

cc: --- District Administrator