

Memorandum

295.1237

To : Mr. Dennis Maciel, Chief
Excise Taxes and Fees Division (MIC:56)

Date: February 24, 2005

From : Randy Ferris
Senior Tax Counsel (MIC:82)

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Subject: Request for Legal Opinion #04-05
E-Waste Recycling Fee and Gross Receipts

This is in response to your December 23, 2004, memorandum to Assistant Chief Counsel Janice Thurston, which has been assigned to me for reply. In relevant part, you state:

We have received a request via e-mail from K--- Corporation for the specific statutes which address the applicability of the Sales and Use [T]ax [Law] to the Electronic Waste Recycling Fee (SB 20/50; Public Resources Code [PRC] § 42460 et seq.). K--- Corporation has asked for a written response to their inquiry[:]

“ . . . Is the Electronic Waste Recycling Fee includable in the retailer’s taxable gross receipts? . . .

We are unable to find a specific statute that addresses this issue. Additionally, we would like a formalized response for our chronology files for historical purposes to memorialize the finding. . . . Please give us your legal opinion and annotate the opinion, if possible.

DISCUSSION

As you know, California imposes a sales tax on a retailer’s gross receipts from the retail sale of tangible personal property in this state, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code, § 6051.) This tax is imposed on the retailer who may collect reimbursement from the customer if the contract of sale so provides. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § 1700.) Taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials used, labor or service cost, or any other expense of the retailer passed on to the customer. (Rev. & Tax. Code, § 6012, subd. (a)(2).)

As you also know, under SB 50, the e-waste recycling fee is imposed on the purchasers of covered electronic devices, not on the retailers who sell these items. Therefore, based on the

above-cited authorities, when retailers separately state the e-waste recycling fee on the receipts they issue to their customers (as mandated by SB 50), the retailers are not passing on expenses to the purchasers, but are merely executing their collection obligations under SB 50.

I trust that this response provides the guidance the Division seeks. If any questions or concerns remain, please do not hesitate to contact me.

RMF:rmf

cc: Lynn Bartolo (MIC:57)
Ed King (MIC:33)
Judy Nelson (MIC:82)
Monica Brisbane (MIC:82)
Janice Thurston (MIC:82)
Dave Rosenthal (MIC:50)