



STATE BOARD OF EQUALIZATION

August 17, 2001

Re:
Permit No. ---

Dear --- ---,

This is in response to your letter dated June 25, 2001, addressed to the Legal Department of the State Board of Equalization. In your letter you state that it was suggested you contact us regarding a legal opinion on whether tax applies to energy surcharge fees your company charges its customers.

We understand that your company sells industrial gases and supplies for use in welding operations. Specifically, you state:

"At present we are taxing only customers who are not tax exempt. This surcharge is temporary and became effective with our company on June 15, 2001. I am requesting clarity, as to whether these surcharges actually warrant tax?"

I understand you to ask whether the energy surcharge your company charges its customers as part of its sale of industrial gases or welding supplies is part of your company's taxable gross receipts.

DISCUSSION

As a starting point, 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 exempt from taxation by statute. (Rev. & Tax. Code § 6051.)¹ When sales tax does not apply, such as when the sale takes place outside the state, use tax is imposed on the sales price of property purchased from a retailer for the storage, use or other consumption of that property in California. (Rev. & Tax. Code §§ 6201, 6401.)² Taxable gross receipts or sales price include all amounts received with respect to the sale, with no deduction for the cost of the materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code §§ 6011, 6012.) Thus, unless a specific exclusion exists, expenses incurred by a retailer which are part of the retail sale of tangible personal property, such as energy surcharge fees, are

included in the taxable gross receipts, as are any other costs of the retailer which are passed on to the end customer (even if those costs are separately itemized).

We understand that the "energy surcharge fee" your company charges is a cost of doing business (i.e., energy charges incurred to heat and cool an office, warehouse and/or distribution center) which it passes on to its customers. Thus, the "energy surcharge fee" is part of the cost of materials sold to your company's customers at retail and must be included in your company's taxable gross receipts whether or not they are separately stated in a sales invoice provided to your company's customers. These charges are not tax exempt.

I hope this answers your question. If you have any further questions, please write again.

Sincerely,

Trecia M. Nienow
Tax Counsel

TMN:sr

cc: District Administrator

¹This tax is imposed on the retailer who may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code § 1656.1; Reg. 1700.)

²This tax is imposed on the person actually storing, using, or otherwise consuming the property. (Rev. & Tax. Code § 6202.) A retailer engaged in business inside this state is required to collect this tax from its customers and remit it to this Board. (Rev. & Tax. Code §§ 6202, 6203.)