



STATE BOARD OF EQUALIZATION

LEGAL DIVISION – MIC: 82
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 445-3723
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

BURTON W. OLIVER
Executive Director

February 6, 1996

Dear X-----,

Your letter dated January 24, 1996, to Mr. Andrew Meyers, Professional Advisor to the Honorable Johan Klehs, has been referred to me for response. You ask whether a certain delivery charge billed to the California Department of Transportation ("Cal Trans") is subject to tax.

DISCUSSION

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers, measured by their gross receipts, from retail sales in this state of tangible personal property. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.)

Transportation charges are included in gross receipts unless the charges for transportation are separately stated and are for transportation from the retailer's place of business, or other point of shipment, directly to the purchaser. In addition, if the transportation is by the retailer's own trucks, vehicles, or other facilities, the charges are not excluded from the measure of tax unless the transportation occurs after the sale of the property. (Rev. & Tax. Code § 6012(c)(7).) Thus, to obtain the exclusion, a retailer who delivers the property in his or her own trucks must have an explicit written agreement with the purchaser prior to delivery that title is to pass prior to the time transportation commences. (Reg. 1628(b)(3)(D).)

The transportation charges at issue herein were separately stated. It appears that the transportation of the tangible personal property was £Tom your place of business directly to Cal Trans. However, you delivered the property in your own trucks. Therefore, in order to exclude transportation charges in the measure of tax, there must have been an explicit written agreement between you and Cal Trans that title to the property sold passed prior to the time transportation commenced. There is no indication that such an agreement was executed by the parties.

Accordingly, we conclude that the transportation charges are subject to tax and that you properly billed Cal Trans for sales tax reimbursement on those charges.

Additionally, you ask whether the charge to your customers for cutting lumber to size is subject to tax. As previously discussed, sales tax is measured by "gross receipts" which is defined as the total amount of the sale price of the retail sales of retailers, including charges for fabrication labor. (Rev. & Tax. Code § 6012(a)(2) and (b)(1).) When you sell lumber to your customers and charge them for cutting the lumber to size, such charge constitutes taxable fabrication labor. Thus, the total amount of the sale price of the lumber, including charges for the fabrication labor, is subject to tax. Additionally, if your customers furnish lumber to be cut to size, your charges for cutting the lumber is taxable as a sale of fabrication labor. (Rev. & Tax . Code § 6006(b).) Therefore, if the contract of sale so provides, you may collect sales tax reimbursement from your customers on those charges.

If you have any further questions, please feel free to contact me at (916) 445-3723.

Sincerely,

Gary J. Jugum
Assistant Chief Counsel

GJJ:SHC:rz

Cc: X----- District Administrator