

#### **445.0000 RATE OF TAX—CHANGE IN**

*See also "Tax-Paid Purchases Resold."*

**445.0010 Coin Operated Copy Machine.** A taxpayer sells photocopies through coin operated machines. It contracts with owners of stores, libraries, and other locations to install the machines in places accessible to the public. The contracts typically provide that the taxpayer will pay the location owners a percentage of the receipts from the machines. There is no contract between the taxpayer and the location owner regarding the per copy price. The per copy price is initially set by the taxpayer at a per copy price it deems appropriate. However, contracts do include a provision allowing price changes. Contracts include the following paragraph:

“Vendor (taxpayer) reserves the right to reasonably raise or lower the vend price for coin copies . . . in accordance with prevailing economic conditions.”

The taxpayer did not raise the per copy price even though there was a tax increase. Price increases in vending machines are made in at least one nickel increments, since machines requiring payment in odd penny amounts are not practical.

In this case, the taxpayer's contracts do not qualify for the fixed price exemptions under Revenue and Taxation Code sections 7261 and 6376.1. The contracts may have obligated the taxpayer to pay a fixed percentage to the location owners as rent, but they did not obligate the claimant to furnish the copies for a fixed price as required by the statute. The typical contract authorized the taxpayer to raise prices in accordance with “prevailing economic conditions,” and a tax increase would justify a price rise under this language. The fact that the taxpayer was unwilling to raise prices because one penny increases would be impractical and a nickel decision increase would deter the customer was purely a business decision and was not required by the contracts. 3/2/94.

**445.0020 Delivery after Change.** Prior to August 1, 1967, a nursery executed a contract under which it agreed to sell berry plants to a customer and to deliver the plants after August 1, 1967. The customer paid a deposit prior to that date and the berry plants were delivered to him after August 1, 1967. Inasmuch as it was not explicitly agreed otherwise, title passed to the buyer at the time the seller completed his performance with reference to the physical delivery of the goods. Accordingly, the applicable tax rate was that which was in effect after August 1, 1967. 9/20/67.

**445.0060 Withholding Sales Tax from Gasoline Tax Refunds.** The sales tax rate applicable where sales tax is withheld by the controller from a motor vehicle fuel license tax refund is the rate in effect at the time the application for refund is processed by the State Controller. This is because the sale of fuel is exempt from sales tax pursuant to section 6357 of the Sales and Use Tax Law at the time of the sale. No sales tax is imposed unless and until the license tax becomes subject to refund.

However, when fuel is sold to a foreign consulate officer or employee who is exempt from the motor vehicle fuel license tax by treaty, the sales tax applies at the time of the sale and the applicable tax rate is, therefore, the rate in effect at that time. 9/6/67.