

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-8208

July 24, 1991

Mr. S--- W---
W---'s of N---, Inc.
XXXX --- Avenue
---, California XXXXX

Re: Application of Sales Tax to Shipping Charges
SR – XX-XXXXXX

Dear Mr. W---:

Your letter received by the this office on May 31, 1991, in which you request a legal opinion concerning the application of sales tax to your shipping and handling charges has been assigned to me for a response.

In your letter, you state as follows:

“W---’s of N---, Inc. operates a mail-order business in which we ship items all over the state. . . .

“. . . We use a fairly simple scale to figure our shipping/handling charges, \$2.00 for a watch or similar sized item, \$4.00 for a radio, and \$6.00 for a TV. We show a shipping/handling charge as a separate item at the bottom of each invoice and treat it as a NON-TAXABLE item. We do not compute the exact shipping charge for each item that we ship, as this would be too time consuming. We base our shipping handling charges on the scale stated above. At the end of the month (we ship exclusively UPS), we total the shipping/handling charges collected for the month on all invoices, subtract the actual UPS charges billed by UPS, and pay sales tax on the difference.”

Attached to your letter is a sample invoice in which tax is computed on the costs of the items sold but not on the charge labeled “shipping.”

The sales tax imposed by Revenue and Taxation Code section 6051 is measured by gross receipts. Transportation charges are included in the definition of gross receipts and therefore are taxable except where excluded by statute. Rev. & Tax Code § 6012(a)(3).

The exclusion requirements, as set forth in Revenue and Taxation Code section 6012(c)(7), are as follows:

1. The transportation charge is separately stated in the invoice, bill, statement, contract etc.;
2. The transportation charge does not exceed the retailer's cost for the transportation;
3. The transportation is made directly to the purchaser from the retailer's business or other point; and
4. The exclusion of transportation charges is determined on a transaction by transaction basis.

Transportation charges are regarded as separately stated only if they are separately set forth in the contract of sale or other document issued at the same time as the sale. Sales and Use Tax Regulation 1628(a), "Transportation Charges." The stated charges cannot exceed the actual cost of transportation.

In your case the charge which you designate as "shipping" on each of your invoices exceeds the actual cost of transportation because it included both shipping and handling charges. Therefore, you may not exclude these charges from taxable gross receipts.

The board will allow, however, a UPS or postage charge to be excluded from gross receipts if the charge is designated as "shipping and handling" or "postage and handling" on the retailer's invoice and the actual amount of the UPS charge or postage is placed on the packages sent to the customer. Sales and Use Tax Regulation 1628(a) and Sales and Use Tax Annotation 557.0450, Business Taxes Law Guide. The amount excludable cannot exceed the actual shipping charge.

Whether shipping charges are excludable from gross receipts is determined on a transaction by transaction basis. Thus, to be entitled to the exclusion, in addition to the above requirements you will need to keep records showing the actual cost of transportation for each transaction.

We are enclosing for your information a copy of Regulation 1628. If you have any other questions concerning the application of sales tax, please do not hesitate to write to us again.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cl
Enclosure