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STATE OF CALIFORNIA

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March 5, 1996

Mr. REDACTED TEXT

Re: Account No. REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in response to your letter dated February 9, 1996 regarding the application of tax on transportation charges imposed by your company, REDACTED TEXT (hereafter "COMPANY A").

You state:

"Our company is thinking of charging for courier service that we already perform for the REDACTED TEXT. We are affiliated with REDACTED TEXT and we use our own personnel and vehicles. The courier service would include deliveries from both pharmacies that we own."

You ask a series of questions based on the above facts. For purposes of clarity, we have separately responded to each of your questions below.

"1) If we start charging different companies within the affiliation a flat rate cost allocation charge for the courier service (i.e., transporting documents, paychecks, and memo's) would this income be subjected to sales tax?"

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.) Taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of materials, service, or other expense of the retailer passed on to the purchaser unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.) This tax is imposed on the retailer who may collect reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) When sales tax does not apply, use tax is imposed on the sales price of tangible personal property purchased from a retailer for the storage, use, or consumption of that property in California. (Rev. & Tax. Code §§ 6201, 6401.)

Revenue and Taxation Code section 6012(c)(7) excludes separately stated transportation charges from a retailer's taxable gross receipts where certain conditions are met. (See also Rev. & Tax. Code 6011(c)(7) excluding certain transportation charges from taxable sales price.) Regulation 1628 (copy enclosed) further explains these sections in

regard to how tax applies to transportation charges. Subdivision (a) of Regulation 1628 provides that taxable gross receipts do not include separately stated charges for transportation from the retailer's place of business (or other point from which shipment is made directly to the purchaser) provided the transportation is by other than facilities of the retailer and the charges for such transportation do not exceed the cost of transportation to the retailer. Subdivision (b) provides that tax does not apply to a retailer's separately stated charge for transportation from the retailer's place of business (or other point from which shipment is made directly to the purchaser) where the transportation occurs *after* the sale of the property is made to the purchaser, the transportation is made using the retailer's facilities, and the charge for such transportation is reasonable.

You state that your company is thinking of charging for the courier service it already performs for its affiliate companies. The examples you list of the items your company delivers for its affiliates consist of documents, paychecks, and memorandums. We understand this to mean that COMPANY A is not delivering tangible personal property that it sells at retail to its customers, but instead is only providing transportation services to others who request that certain tangible personal property be moved from one location to another. In other words, we assume that COMPANY A is not selling tangible personal property to any of its customers at retail and charging an additional amount for the transportation of that property to the customer. (If this assumption is incorrect, our opinion would be different.) Under these facts, COMPANY A does not owe sales or use tax on its charges for transportation since it is not selling any tangible personal property at retail. Regulation 1628 governs whether tax applies to any such charges the retailers hiring COMPANY A may pass on to their customers.

“2) How should we structure these charges to avoid being subjected to sales or use taxes?”

We do not provide tax advice on how to avoid the application of tax based on certain scenarios presented to us. As set forth above, however, tax does not apply to COMPANY A's charges for transportation since these charges are not part of the retail sale of tangible personal property to customers of COMPANY A.

“3) Would delivery's [sic] from the pharmacies be subjected to sales taxes if we charge our customer a flat charge separately stated on the bill?”

We understand from your question that COMPANY A is selling tangible personal property to its customers at retail and providing delivery of these goods through its own facilities. Under these facts, tax applies to COMPANY A's separately stated charge for transportation unless the transportation is from COMPANY A's place of business (or other point from which shipment is made directly to the purchaser), the transportation occurs after the sale of the property is made to the purchaser, and the charge for such transportation is reasonable. (Reg. 1628(b)(2).) We assume that COMPANY A transports goods directly from its place of business and that its charges for such transportation are reasonable. The remaining issue is whether COMPANY A's transportation occurs after the sale of the property is made to its customer.

Sales and Use Tax Regulation 1628(b)(3)(D) explains when a sale takes place:

“Unless explicitly agreed that title is to pass at a prior time, the sale occurs at the time and place at which the retailer completes his performance with reference to the physical delivery of the property, even though a document of title is to be delivered at a different time or place. If the contract requires or authorizes the retailer to send the property to the purchaser but does not require him to deliver it at destination, the retailer completes his performance with reference to the physical delivery of the property at the time and place of shipment, e.g., delivery of the property to a carrier for delivery by the carrier to the purchaser; but if the contract expressly requires delivery at destination, including cases where one of the terms of the contract is F.O.B. place of destination, the retailer completes his performance with reference to the physical delivery of the property on tender to the purchaser there. **When delivery of the property is by facilities of the retailer, title passes when the property is delivered to the purchaser at the destination unless there is an explicit written agreement executed prior to the delivery that title is to pass at some other time.**” (Emphasis added.)

We assume that COMPANY A does not have an explicit written agreement with its customers passing title to the property it sells prior to its delivery. This means that the sale of property occurs at the time COMPANY A completes its delivery. COMPANY A's charges for transportation are therefore subject to tax and may not be excluded from its taxable gross receipts.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford  
Staff Counsel

WLA:rz

Enclosure - Reg. 1628

cc: Arcadia District Administrator - AP