

# Memorandum

295.1710

To : Mr. Steve Guest  
Return Analysis Section

Date: November 26, 1997

From : Janice L. Thurston  
Tax Counsel

Telephone: (916) 324-2588  
CalNet 454-2588

Subject: C--- S--- Company  
Permit No. SY --- XX-XXXXXXX ---

This is in response to your October 24, 1997 memorandum requesting our opinion regarding the deduction that this taxpayer has taken for what it calls a "short load fee" which it describes as follows:

"Most mixers carry 8 cu yds of concrete. There is a cut off for loads that are half full. Due to the costs to the company for fuel, payroll, maintenance, etc. we charge a short load fee."

You had stated that you could not locate anything in the Sales and Use Tax Law or its accompanying annotations that would indicate that this source of revenue is exempt from sales tax.

Tax applies to the short load fee. It is a mandatory charge the customer must pay for purchasing less than a full load of concrete and is includible in gross receipts of the taxpayer. Under Revenue and Taxation Code section 6012, "gross receipts" means the total amount of the sale price without deduction for the cost of materials, labor costs or other expenses. This type of charge is similar to an expedite charge or handling charge (see Sales and Use Tax Annotations 295.1506.150 (10/30/91) and 295.1507 (9/8/94).) This is similar to a retailer's charging \$100 for two widgets but \$60 for one widget. The retailer's charging \$10 more per widget when sold singly rather than as one of two widgets does not provide a basis for excluding any part of the \$10 charge from the gross receipts of the sale of the single widget.

The short load fee does not seem to be a part of the cost of transporting the cement. Even if it were a transportation charge, no facts have been presented to show that it should be excluded from the definition from gross receipts under Revenue and Taxation Code section 6012(c)(7) and Sales and Use Tax Regulation 1628.

We also note that the letter from the taxpayer asked about “stand by time” and “pump wash fees.” “Stand by time” appears to be a standby charge as discussed in Annotation 295.0710 (11/26/74) but the “pump wash fee” may be a mandatory charge that would be required to be included in gross receipts and subject to sales tax.

JLT/cmm

cc: --- --- District Administrator (--)