



STATE BOARD OF EQUALIZATION

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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-2608

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April 4, 1994

BURTON W. OLIVER
Executive Director

Mr. B--- R---
T--- W--- S--- F---
XXX --- ---
--- ---, CA XXXXX

Dear Mr. R---:

Re: SR -- XX-XXXXXX

This is in response to your letter dated February 1, 1994, in which you ask if you can report sales by rounding off the total, after sales tax, to the nearest nickel. You state:

“We currently price all food and beverage items at an even nickel on which sales tax is calculated and this frequently causes the total to end in odd cents. We are proposing to round the total, after sales tax, to the nearest nickel (see example 2 and 3 below).”

You further state:

“Where a one or two cent sales price adjustment up or down is made, the scheduled reimbursement amount could go up or down by a penny on some of the sales. If there are eight brackets per dollar of sales price, or a bracket jump approximately every 12 cents of sales price, a one or two cent adjustment to the net sales price charged the customer would place the adjusted sales price in an adjoining bracket about once every four sales. In aggregate our customers would not be over charged or under charged for the collection of sales tax.

“

“Will you please let me know if this procedure would incur any assessments or penalties in a sales tax audit. In particular, we seek rulings (1) that we will not be subject to tax based on rounding up of the sales price without

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offset for rounding down, and (2) the insignificant difference in sales tax reimbursement resulting from rounding down may be ignored as de minimis.”

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Sales tax is imposed on all retailers measured by their gross receipts from retail sales of tangible personal property occurring in this state. (Rev. & Tax. Code § 6051.) “Gross receipts” is the total amount of the sale price of the retail sales of retailers. (Rev. & Tax. Code § 6012.) Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) If a retailer collects more sales tax reimbursement than is due it would be collecting “excess tax reimbursement” which Regulation 1700(b) defines as an amount represented by a person to a customer as constituting sales tax but computed on an amount that is in excess of the taxable amount. Regulation 1700(b)(2) explains that any excess tax reimbursement must be refunded by the retailer to its customer. If the excess tax is not refunded to the customer it must be paid to the Board. A retailer may not knowingly collect excess tax reimbursement.

The law provides that the sales tax is measured by the gross receipts from a retail sale. The Board has the duty to collect the sales and use tax that is due as provided by law. The Board does not knowingly collect more tax than is due or less tax than is due. (Rev. & Tax. Code § 7051 et seq.)

As an example of how you propose to round up, you would start with a food and beverage total of \$24.45, collect tax reimbursement of \$2.08, for a total of \$26.53. You propose to round the total up by 2 cents (\$26.55 instead of \$26.53) and still report and pay the sales tax on the \$24.45 (\$2.08). Assuming that you were not to indicate to your customers that the additional 2 cents was sales tax (reimbursement), you would be increasing your gross receipts by 2 cents but not reporting your sales tax on those additional gross receipts. The tax is measured by the gross receipts, no more and no less. The gross receipts would be \$24.47 not \$24.45. You would incur a tax liability on any unreported gross receipts. On the other hand if you indicated to your customer that the additional amount for rounding up were sales tax (reimbursement) you would be collecting 2 cents excess tax reimbursement. You may not do so.

Your example of rounding down starts with a food and beverage total of \$24.40, tax reimbursement of \$2.07, for a total of \$26.47. You propose rounding the total down by 2 cents (\$26.45 instead of \$26.47.) and still report and pay sales tax on \$24.40 (\$2.07). If you were not to indicate to your customer that the 2 cents you were deducting was taken from the sales tax (reimbursement) you would be decreasing your gross receipts by 2 cents but you would not report those decreases, thereby overstating your gross receipts by 2 cents. Thus, you would be collecting excess sales tax (reimbursement) which you may not do (that is, you would be collecting tax reimbursement on \$24.40 but receiving taxable gross receipts of only \$24.38). On the other hand, if you indicated to your customer that the 2 cents you were rounding down were reducing the sales tax (reimbursement) by 2 cents you would be under collecting sales tax (reimbursement). You may under-collect sales tax reimbursement from your customers as long as you report and remit to the Board the sales tax based on your actual gross receipts, which in this case would be \$24.40.

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However, there is no reason you cannot make "tax included" charges at nickel increments, and then back the tax out of the total when reporting your gross sales. The requirements for this method are explained in Regulation 1700, a copy of which is enclosed. In that way, you are able to get away from using pennies while still reporting and paying the proper tax. Additionally, since the sales tax is imposed on the retailer, you are not obligated to collect any sales tax reimbursement from your customers. If you do not collect any reimbursement, you may round the amounts up or down as long as you report and remit tax to the Board based on the actual amount you collect from your customer for taxable sales. Of course, this method results in a higher tax liability than does the tax-included method permitted by Regulation 1700.

In summary, your proposal as explained would result in improperly collecting and remitting the Board either more tax than is due or less tax than is due. If we can answer any further questions, please feel free to write again.

Very truly yours,

Rachel M. Aragon
Staff Counsel

RMA:md

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