

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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July 3, 1990

Mr. P--- C. C---
Law Offices of
B---, B--- & K---
XXXX XXth Street
---, CA XXXXX

Dear Mr. C---:

This is in reply to your May 4, 1990 letter regarding the application of sales tax by your client, Mr. R--- D--- G---, under the following facts you provided:

Mr. G--- is licensed and regulated by the California Public Utilities Commission as a dump truck carrier, and owns and operates a transportation business. In the course of his business, Mr. G--- hauls materials such as sand and gravel for his transportation customers, and makes charges for his transportations services.

“From time to time, some of Mr. G---’s customers request that he obtain the materials from the supplier in the first instance, in addition to delivering them. Mr. G--- enters into a written Agency Agreement with these customers, in for as attached hereto as Exhibit A. He purchases the materials from the supplier on credit, picks up the materials at the supplier’s excavation site, and delivers the materials directly to the location designated by the customer. Delivery is made either by Mr. G---’s trucks or by subhaulers engaged by Mr. G---.

“Mr. G--- is invoiced by the seller for the purchase price of the materials, including applicable sales tax reimbursement. The customer may pay the supplier directly, or Mr. G--- may pay the supplier and be reimbursed by the customer for Mr. G---’s out-of-pocket cost of the materials. Under paragraphs 5 and 6 of the Agency Agreement, the customer has the primary responsibility to pay the purchase price of the materials to the supplier, and is required to indemnify Mr. G---.

“In either case, Mr. G--- is compensated for his services in transporting the materials to the customer’s site. On Mr. G---’s

invoices to the customer, the charge made for transporting the materials is separately stated.

“Mr. G--- does not hold a seller’s permit, does not interpret his activities as constituting the sale of tangible personal property, does not collect sales tax reimbursement from his customers, and does not file sales tax returns and pay sales tax to the Board.”

Given this information, you note that Mr. G--- requests the following opinions for this Board:

“1. That the transactions by Mr. G--- described above are not ‘sales,’ for purposes of the sales and use tax law, because Mr. G--- is acting as the agent of his customers;

“2. That Mr. G--- is not required, by reason of the activities described above, to hold a seller’s permit.”

We are unable give the requested opinions, because we do not have sufficient facts to determine whether Mr. G--- is truly an agent purchasing the materials on behalf of his customer. This Board would consider Mr. G--- as acting only as an agent on behalf of a client if Mr. G--- satisfies all of the following criteria as to each acquisition:

1. Mr. G--- must clearly disclose to the supplier the name of the client for whom Mr. G--- is acting as agent,
2. Mr. G--- must obtain, prior to the acquisition, and retain written evidence of agent status with the client, and
3. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier.

Of course, if Mr. G--- were to issue a resale certificate to the supplier, he would thereby certify to the supplier that he was selling the tangible personal property and destroy the principal/agent relationship.

The facts that you provide note only that Mr. G--- obtains written evidence of his agent status with the client. If Mr. G--- can verify that he clearly discloses to the supplier the name of the client for whom he is acting as agent, and he separately states or separately invoices, exclusive of any agency fee, reimbursement for the cost of the property, which reimbursement the same amount as Mr. G--- pays to the supplier, we agree that sales tax does not apply to Mr. G---’s charge. In such case, he would not be required to hold a seller’s permit.

You note, if Mr. G---'s charges are subject to tax, then he requests the Board to issue an opinion that, if his separately stated charges for transportation do not exceed a reasonable charge, tax does not apply to those charges.

As you know, Revenue and Taxation Code section 6012, subdivision (c)(7), excludes from the definition of "gross receipts:"

"Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer; provided, that if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser."

You note that Mr. G--- separately states the transportation charges on his invoices to the customer. The charge for transportation is for Mr. G---'s transporting the materials from the supplier's facility directly to the customer; therefore, the transportation charge is for transportation from an "other point from which shipment is made directly to the purchaser." Paragraph 7 of Mr. G---'s Agency Agreement provides as follows:

"G--- shall not acquire any title or other ownership interest in or to the materials purchased pursuant to an order. Title to the materials shall pass from the seller directly to Principal at the time that the seller makes the materials available for pick-up at the seller's facility."

We agree with your conclusion that, if indeed Mr. G--- is the retailer of the materials, the quoted provision passes title to the tangible personal property to Mr. G---'s customer at the supplier's facility; accordingly, Mr. G---'s transportation occurs after the sale of the property to the customer. If Mr. G--- makes only a reasonable charge for the transportation, we agree that the charge is excludable from the gross receipts of the sale of the materials.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr