

M e m o r a n d u m**557.0085**

To: Mr. Mark Noack
Supervising Tax Auditor

November 3, 1993

From: Carl Bessent

Subject: Taxability of concrete pumping charges
S--- C--- SR -- XX-XXXXXX

This is in response to your August 25, 1993 Memorandum to Legal in which you request our opinion as to whether tax applies to concrete pumping charges. You indicate that S--- C--- does not own a truck suitable for concrete pumping, so the pumping is subcontracted out to another company. The only document S--- C--- has for concrete sales is an invoice. S--- C--- is taxing the charges for concrete and not taxing the pumping charges.

Sales and Use Tax Regulation 1628(a), "Transportation Charges", provides that charges for transporting tangible personal property from a retailer's place of business or other point from which shipment is made directly to a purchaser are specifically excludable, provided that such charges are separately stated, and the transportation is by other than facilities of the retailer. Transportation charges are treated as separately stated only if they are separately set forth in the contract for sale or in a document reflecting that contract, issued contemporaneously with the sale, such as the retailer's invoice.

In the sample invoice you provided, the pumping charges are separately stated as indicated by being handwritten as compared with all other calculations being electronically prepared. The "delivered price" included all charges except the pumping charges in the sample invoice. The separately stated cost representing the pumping charge of the subcontractor for the concrete to go directly to the purchaser is borne by the purchaser. The place where title passes to the customer is irrelevant in this matter because neither the pumping charges were included in the delivered price nor the pumping charges were by facilities of the retailer. Therefore, the separately stated concrete pumping charges are not subject to sales tax to the extent that the amount excluded from the measure of tax cannot exceed the cost of the transportation to the retailer (Reg. §1628(a)).

If you need anything further, please do not hesitate to call me at (ATSS) 8-454-6592 or write again.

CJB/md