

**STATE BOARD OF EQUALIZATION**

(916) 445-2641

January 6, 1978

T--- J. C--- & A---
XXXXX --- ---
---, CA XXXXX

Attention: Mr. T--- J. C---
President

Gentlemen:

SR -- XX XXXXXX

Mr. S--- K--- has asked that we review his letter to you of November 15, 1976, in regard to the application of the California sales tax to one of your client's dealer incentive programs. While we are basically in agreement with Mr. K---, that tax applies to premiums delivered to California dealers, we wish to clarify what we think is the proper incidence of the tax.

As we understand your program, your client A--- L--- has established a dealer incentive program whereby dealers are offered various premiums based upon the amount of merchandise purchased by them for resale. Upon making a purchase a dealer selects his premium from a catalog or brochure and submits a special order form along with his merchandise order. A--- L--- notes its approval and forwards the special order form to you. You send an order to the out-of-state supplier of the premium who ships the premium directly to the dealer. The supplier bills you for the premium. You in turn obtain reimbursement from A--- L--- at your cost plus 10 percent.

We think that the proper application of the tax is dictated by the principle stated in our Regulation 1670 "Gifts, Marketing Aids, Premiums, and Prizes," paragraph (c). Although paragraph (c) appears to have been intended to apply to situations where premiums are delivered with items sold at retail, we believe that it can also be applied in this case, where the premium is delivered with an item sold for resale.

Paragraph (c) provides:

“When a person delivers tangible personal property as a premium together with other merchandise sold, and the obtaining of the premium by the purchaser is certain and not dependent upon chance or skill, the transaction is a sale of both articles. Tax applies to the gross receipts received from the purchaser for the goods and the premium except when the premium is delivered with a food product for human consumption or other exempt item. In such case tax applies to the gross receipts from the sale of the premium, which will be regarded as the cost of the premium to the retailer, in the absence of any evidence that the retailer is receiving a larger sum. If there is no such evidence, and if the retailer has paid sales tax reimbursement to his vendors or to the state, measured by the sale price of the premiums to him, no further tax is due from him.”

In the context of this case we are of the opinion that A--- L--- is the retailer of the premium items delivered to their dealers. Accordingly, tax applies with respect to its sale of premium items delivered to California dealers but not with respect to premium items delivered to out-of-state dealers. It is immaterial that the premium items delivered to California dealers may have been shipped directly to the dealers from an out-of-state supplier.

As Regulation 1670 provides, tax applies to the gross receipts from the sale of the premium, which will be regarded as the cost of the premium to the retailer (A--- L---), in the absence of any evidence that the retailer (A--- L---) is receiving a large sum.

Very truly yours,

Gary J. Jugum
Tax Counsel