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**STATE BOARD OF EQUALIZATION**

(916) 445-5550

June 28, 1989

Re: Application of Sales Tax to Credits

Dear

Your letter dated May 26, 1989 has been referred to this unit for response. You ask whether sales tax applies to the amount of certain credits given by your client (Company) to its customers.

The Company sells for resale various items of tangible personal property. Its catalogs are its basic tool used to generate sales. These catalogs are sold to its dealers, usually at retail.

The Company may institute a new program. Each of its dealers will earn a credit based on the dealer's monthly merchandise purchases through the catalog (these purchases would be for resale). The dealer would be able to use this earned credit against charges for its retail purchases of catalogs and other advertising materials. You ask whether sales tax applies to the amounts charged to the dealers before the credit is applied or after the credit is applied.

Discussion

The total amount of the taxable sales price includes any amount for which credit is allowed by the seller to the purchaser. (Rev. & Tax. Code §§ 6011(b) (3), 6012(b) (3).) Thus, when the seller gives the purchaser a credit, the amount of that credit is included in the taxable measure. On the other hand, an amount that never becomes part of the consideration for the purchase of tangible personal property does not become part of the taxable measure, whether the seller merely charges a certain amount or, for example, the seller makes a deduction from the "usual" charge. That is, an amount deducted from an initial computation to reach the agreed price is not part of the taxable measure when there was never an obligation to pay that deducted amount.

When a purchaser earns credits based on previous sales, and then applies those credits to the retail purchase of other tangible personal property, the amount of the credit is included in the taxable measure. Under the examples presented in your letter, the

amount of credits applied to the purchase at retail of catalogs and other advertising materials must be included in the Company's taxable measure.

For your future reference, we note that your letter asks for a "interpretation (ruling)." Revenue and Taxation Code Section 6596 provides that a taxpayer may be relieved of liability for payment of tax when the taxpayer has relied on incorrect written advice from the Board. In order to come within the provisions of Section 6596, all relevant facts concerning the transaction must be disclosed, including the identity of the taxpayer. Thus, although we are happy to answer questions regarding application of sales and use tax even if the taxpayer is not identified, responses to such requests do not come within the provisions of Section 6596 and will not serve to relieve a taxpayer of its otherwise applicable tax liability. (See Market Street Railway Company v. State Board of Equalization (1955) 137 Cal.App.2nd 87.)

If you have further questions, feel free to write again.

Sincerely,

David H. Levine  
Tax Counsel

DHL/smt:1441C  
cc: Sacramento District Administrator