



STATE BOARD OF EQUALIZATION

Re:

June 27, 1996

This is in response to your letter dated March 29, 1996, regarding the application of tax to a \$5.00 charge for cleaning and testing for each returnable container in which --- sells chemicals to its customers. You state:

"Our Company is in the chemical distribution business. We sell chemicals to our customers in returnable containers (poly returnable drums and totes). We are going to be charging our customers a cleaning and testing fee of \$5.00 per container. The containers will be cleaned, etc. by our branch personnel at the respective branch when the container is returned by the customer. This charge is required, not optional. The container testing fee will appear as a separate line item within the body of the invoice to the customer when containers are returned."

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Although the retailer owes the sales tax, the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1651.1.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

Sales tax is measured by "gross receipts" which mean the total amount of the sale price of retail sales of retailers, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.) Revenue and Taxation Code section 6012(b)(I) specifically provides that gross receipts include charges for any services that are a part of the sale of tangible personal property.

You state that the \$5.00 charge for each returnable container for cleaning and testing is required, not optional. Our understanding is that the \$5.00 charge is a condition of purchasing the chemicals from --- and that it is an integral part of the sale of the chemicals. Thus, the \$5.00 charge is a charge for services that are a part of the sale of

tangible personal property, and the charge is necessarily included in the measure of tax. In other words, tax applies to the total amount of the sale price of the chemicals sold by -- to its customers, including the \$5.00 charge for cleaning and testing, unless the sale is specifically exempt from taxation by statute.

You ask whether the tax rate applicable to the \$5.00 charge should be based on where the cleaning and testing is performed at a local branch location, or where the customer is located. In California, the minimum combined state sales and use tax rate is currently 7.25 percent. That amount includes the state and local tax. In some counties, the total sales and use tax rate is higher. Any tax which may be applicable above 7.25 percent would be a tax adopted by a district pursuant to the Transactions and Use Tax Law. (Rev. & Tax. Code § 7251, et seq.) I will refer to such taxes as district taxes. Pamphlet 71, "California City and County Sales and Use Tax Rates," a copy of which is enclosed, includes a list of those counties that have adopted ordinances creating special districts imposing district taxes.

A district's sales tax is applicable to sales occurring in that district unless the sale is otherwise exempt from the district sales tax. (Reg. 1823(a) (copy enclosed).) Because the \$5.00 charge is part of the total sale price of the chemicals, the applicable tax rate would depend on the place of the sale of the chemicals by --- to its customers, If the sales occur inside California in a district which has a district tax, --- would owe district sales tax with respect to those sales. When --- sales occur outside California, the district use tax, rather than the district sales tax, will apply unless the use is exempt from taxation by statute. A district's use tax is applicable to the use of property purchased outside the district for use inside the district. (Reg. 1823(b).) The purchaser owes the district use tax. However, any retailer engaged in business in a district imposing the transactions and use taxes and making sales of tangible personal property, the storage, use or other consumption of which is subject to the state administered use tax imposed by that district is required to register with the board and collect the use tax from the purchaser. (Reg. 1827(a) (copy enclosed).)

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung
Tax Counsel

SHC:rz
Enclosures: Pamphlet 71, Regulations 1823, 1827
cc: