

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-8485

October 30, 1991

P--- C---
G---, Incorporated
XXXX E. --- Street
---, CA XXXXX-XXXX

Re: G---, Inc.
SR – XX-XXXXXX
Services That are a Part of the Sale

Dear Mr. C---:

This is in response to your correspondence of September 6, 1991, requesting our opinion as to whether expedite charges are taxable.

Facts

You described the facts in this matter as follows:

“We are a manufacturer of close tolerance dimensional measurement equipment with a standard delivery on manufactured items of three to four weeks. We offer an expedited delivery of five working days on manufactured items of an additional 25% above the listed catalog price.

“Certain of our customers contend that this 25% expedite charge is non-taxable and, therefore, refuse to pay the tax. I’m told by your department that since the expedite charge is separate from shipping charges (items are shipped the same way regardless of delivery time) it constitutes “material overhead” and is therefore taxable.”

Sales Tax - General Discussion

Except to the extent specifically excluded or exempted by statute, the Sales and Use Tax Law, California Revenue and Taxation Code (Section 6001 et seq.) imposes an excise tax in connection with the retail sale of all tangible personal property sold or purchased for use in this state. (All statutory citations are to the California Revenue and Taxation Code, unless otherwise

noted herein.) Section 6051 imposes sales tax on the gross receipts from the retail sale of all tangible personal property sold in this state. The sales tax is imposed upon the retailer. California Civil Code Section 1656.1 allows the retailer to collect sales tax reimbursement from the consumer.

Gross Receipts Include Services That are a Part of the Sale

“Gross Receipts” is an all encompassing concept. As noted above, except to the extent specifically excluded or exempted by statute, all gross receipts from the retail sale of tangible personal property sold or purchased for use in this state are subject to sales or use tax.

Section 6012(b)(1) provides that “gross receipts” include “[a]ny services that are a part of the sale.” The Board of Equalization has long-taken the position that any services rendered in connection with a sale of tangible personal property are taxable as “services that are a part of the sale” within the meaning of Section 6012(b)(1). In our opinion, the fact that such services are related to, and are rendered contemporaneously with, the sale of tangible personal property is generally sufficient to render the charges for such services taxable. It is irrelevant whether or not such charges are separately stated or are provided at the option of the purchaser. It is also irrelevant whether title passes to the purchaser before or after the services are rendered.

The concept of “services that are a part of the sale” is illustrated in the following Business Taxes Law Guide annotation”

“295.1680 ‘Services That Are a Part of the Sale’ include uncrating, trucking to building site and placing in rooms, where agreement obligates seller to perform these services. 10/19/50.”

The Board of Equalization has taken the position that where the sale agreement obligates the seller to provide certain services, such services are considered to be part of the sale. Business Taxes Law Guide annotation 295.1690 provides in relevant part:

“Services that are a Part of the Sale. ‘Services that are a part of the sale’ include any the seller must perform in order to produce and sell the property, or for which the purchaser must pay as a condition of the purchase and/or functional use of the property even where such services might not appear to directly relate to production or sale costs....8/16/78.”

In our opinion, the expedite charges are taxable as a part of gross receipts because there is no applicable exclusion or exemption from tax liability. Such charges are subject to tax as “services that are a part of the sale” pursuant to Section 6012(b)(1) because they are required pursuant to contracts of sale where the customers wish the equipment to be delivered within five working days. Additionally, the services rendered to expedite delivery are related to, and are rendered contemporaneously with, the sale of the equipment. Finally, the expedite charges are in the nature of administrative fees which are generally included within the measure of gross receipts. [See e.g., Bus. Tax. Law Guide Annotation 295.1480 which provides:

“Administrative” Fee. A cooperative type store, housing numerous concessionaires will sell to members merchandise at prices below average retail. To all prices will be added a 6% administrative fee. This fee, even though separately stated, is a part of the selling price and includible in taxable gross receipts. 11/23/54.]

If you have any further questions, please do not hesitate to write to us again.

Cordially,

Victoria Lani Arena
Tax Counsel

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