



STATE BOARD OF EQUALIZATION

June 4, 1976

Gentlemen:

This is in response to your letter of April 21, 1976, which was addressed to ---. Your letter was referred to the undersigned for reply.

You have raised the question as to how --- may comply with Regulations 1546 and 1700 of the California State Board of Equalization. Particularly, your question concerns the manner of reporting sales tax and collecting sales tax reimbursement from customers in instances where repair work is done. The regulations referred to have recently been amended to take into consideration principles enunciated by the California Supreme Court to the effect that retailers may not, for their own convenience, collect sales tax reimbursement from their customers on charges which are not properly subject to tax.

Our Regulation 1546, "Installing, Repairing, Reconditioning in General," provides that if the retail value of parts and materials furnished in connection with repairman must segregate on the invoices to his customers and in his records the fair retail selling price of the parts and materials from the charges for labor of repair, installation or other services performed. The repairman is prohibited, pursuant to Regulation 1700, "reimbursement for Sales Tax," from collecting sales tax reimbursement applicable to the portion of the total charge which represents repair or installation labor would constitute excess sales tax reimbursement.

If the retail value of the parts and materials furnished in connection with repair work is 10 percent or less of the total charge and if no separate charge is made for such property, the repairman is the consumer of the property and tax applies to the sale of the property to him. Note that the repairman is not necessarily required to pay use tax on the cost of parts if the value of the parts is 10 percent or less of the total charge. The repairman is required to pay such use tax only if no separate charge is made for the property.

We understand that --- maintains, and also furnishes to its dealers, a schedule of charges to be made, depending on the complexity of the repair work determines the category in which the repair falls. The clerk who prepares the billing refers to the chart to determine the charge and then adds the California tax based on the total charges where applicable to those customers other than dealers.

Statistics are not presently available relative to the value of parts used in repairs by type of camera or type of repair. However, statistics are available as to the value of chargeable repair by type of repair, i.e., minor, general, major, or maximum.

--- proposes to cease its present practice of computing tax on the total invoice price. This change of policy is in accordance with our regulations.

--- proposes to comply with the requirement of Regulation 1546 that it segregate material and labor on each billing by ascertaining an average cost of materials used in each repair category, i.e., minor, general, major, or maximum, through the use of available statistics and to use such average as a constant or weighed percentage of the total charge which would be representative of the cost or parts for each repair. The balance of the charge would constitute labor and thus would be exempt from the sales tax.

The law requires generally that the repairman must segregate on the invoices to his customer and in his records the fair retail selling price of the parts and materials from the charges for labor of repair, installation, or other services performed. "Fair retail selling price" is a speculative figure difficult to ascertain. We find it reasonable to conclude that the charges to be made by --- using its minor, general, major, and maximum classifications, may in each instance within each category reasonably approximate the fair retail selling price of parts and materials.

It is clear that tax reimbursement may not be charged to the customer based upon the total repair price. It is clear that any charge for parts and materials cannot be based upon an average of parts and materials used in all classifications of repair. It is equally clear that the tax consequences of each repair transaction must be determined independently of all other transactions. It is only reasonable, however, to accept the practice which you have proposed as being in compliance with our regulation if in affect the "fair retail selling price" of the parts and materials used in any particular repair transaction is reasonably ascertained. The single exception to our acceptance of this procedure would occur where no parts or materials are utilized in a repair.--- would not be permitted to collect tax or tax reimbursement from its customers based upon the "fair retail selling price" of parts where in fact no parts were sold.

Very truly yours,

Gary J. Jugum
Tax Counsel

J:alicetilton