

California Code of Regulations

TITLE 18. Public Revenues

Division 2. State Board of Equalization--Business Taxes

Chapter 4. Sales and Use Tax*

Article 12. Matters Involving Transportation of Property

§1628. Transportation Charges.

- (a) Transportation by Carrier. Except as provided in paragraph (c) below, in the case of a sale, whether by lease or otherwise, tax does not apply to “separately stated” charges for transportation of property from the retailer's place of business or other point from which shipment is made “directly to the purchaser,” provided the transportation is by other than facilities of the retailer, i.e., by United States mail, independent contract or common carrier. The place where the sale occurs, i.e., title passes to the customer or the lease begins, is immaterial, except when the property is sold for a delivered price or the transportation is by facilities of the retailer, as explained in (b) below. The amount of transportation charges excluded from the measure of tax shall not exceed the cost of the transportation to the retailer.

Transportation charges will be regarded as “separately stated” only if they are separately set forth in the contract for sale or in a document reflecting that contract, issued contemporaneously with the sale, such as the retailer's invoice. The fact that the transportation charges can be computed from the information contained on the face of the invoice or other document will not suffice as a separate statement. If a separately stated charge is made designated “postage and handling” or “shipping and handling” only that portion of the charge which represents actual postage or actual shipment may be excluded from the measure of tax. Such amounts may be excluded from the measure of tax even though such amounts are not affixed to, or noted on, the package. A separately stated charge designated “handling” or “handling charge” is not a separate statement of transportation charges. Tax applies to such charges, notwithstanding the fact that postage or shipment charges may or may not be affixed to or noted on the package.

Property will not be considered delivered “directly to the purchaser” if it is shipped to the retailer, to the retailer's agent or representative, or to anyone else acting in the retailer's behalf. Any separately stated charges by the retailer for the transportation of property to, rather than from, the retailer's place of business, or to another point from which the property will then be “delivered directly to the purchaser,” are included in the measure of tax. Such charges represent incoming freight and are taxable as part of the cost of the property sold by the retailer.

- (b) Transportation by Retailer's Facilities or Property Sold for Delivered Price.

- (1) Definition. “Delivered Price.” Property is sold for a delivered price when the price agreed upon in the contract for sale includes whatever cost or charge may be made for transportation of the property directly to the purchaser. A sale for a “guaranteed price” including a separately stated amount for transportation is a sale for a “delivered price.” Property is not sold for a delivered price when the price is agreed upon and to this price is added a separately stated amount representing the cost or charge for transportation of the property directly to the purchaser and any increase or decrease in the actual cost of transportation is borne by or credited to the purchaser.

(2) In General. Except as provided in paragraph (c) below, when transportation is by facilities of the retailer or the property is sold for a delivered price, tax applies to charges for transportation to the purchaser, unless (A) the transportation charges are separately stated, (B) are for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, and (C) the transportation occurs after the sale of the property is made to the purchaser. When the sale occurs before the transportation to the purchaser commences, the tax does not apply to separately stated charges for the transportation. The amount that may be excluded from the measure of the tax cannot exceed a reasonable charge for transportation by facilities of the retailer or the cost of transportation by other than facilities of the retailer.

(3) Determination of When Sale Occurs.

(A) Security Agreements. When a sale is made pursuant to a security agreement in which the retailer retains the title as security for the payment of the price, the sale occurs when possession of the property is transferred by the retailer to the purchaser or other person at the purchaser's direction.

(B) Leases. When the sale is by lease, the sale occurs upon the transfer of possession or granting of the right of possession of the property by the lessor to the lessee or other person at his direction.

(C) Sale on Approval. When the sale is on approval, the sale does not occur until the purchaser accepts the property.

(D) Other Sales. Unless explicitly agreed that title is to pass at a prior time, the sale occurs at the time and place at which the retailer completes his performance with reference to the physical delivery of the property, even though a document of title is to be delivered at a different time or place. If the contract requires or authorizes the retailer to send the property to the purchaser but does not require him to deliver it at destination, the retailer completes his performance with reference to the physical delivery of the property at the time and place of shipment e.g., delivery of the property to a carrier for delivery by the carrier to the purchaser; but if the contract expressly requires delivery at destination, including cases where one of the terms of the contract is F.O.B. place of destination, the retailer completes his performance with reference to the physical delivery of the property on tender to the purchaser there. When delivery of the property is by facilities of the retailer, title passes when the property is delivered to the purchaser at the destination unless there is an explicit written agreement executed prior to the delivery that title is to pass at some other time.

(4) Place of Sale. For the purposes of the state Sales and Use Tax Law (but not for the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law nor for the purposes of the Transactions and Use Tax Law) the place of the sale or purchase of tangible personal property is the place where the property is physically located at the time the act constituting the sale or purchase takes place.

(c) Transportation of Landfill Material. Operative January 1, 1989, tax does not apply to separately stated charges for transportation of landfill material, e.g., sand, dirt or gravel, removed from the ground and transported from the excavation site to a landfill site specified by the purchaser if:

- (1) the amount of transportation charges excluded from the measure of tax does not exceed a reasonable charge for transportation by facilities of the retailer or the cost of the transportation by other than facilities of the retailer, or
- (2) the consideration received is solely for the purpose of transporting the material to a specified site and the material is transferred without charge. If such transportation charges are in excess of a reasonable charge for transportation by facilities of the retailer or in excess of the cost of the transportation by other than facilities of the retailer, the provisions of this paragraph will not apply.

For purposes of this paragraph, it is immaterial when title passes to the purchaser of the landfill material.

Appendix

(a) Examples of Contract for Delivered Price.

- (1) The contract for sale provides for the sale of property for \$100 per unit delivered to the purchaser.
- (2) The contract for sale provides for the sale of property for \$100 per unit “which includes cost of delivery at \$10 per unit.”
- (3) The contract for sale provides for the sale of property for \$100 per unit delivered, freight prepaid.
- (4) The contract for sale provides for the sale of property for \$100 per unit freight collect and allowed.
- (5) The contract for sale calls for the sale of property for a guaranteed price of \$100 consisting of \$90 plus \$10 freight.

(b) Examples of Contracts Which Are Not for a Delivered Price.

- (1) The contract for sale provides for the sale of property for \$100 per unit freight collect.
- (2) The contract for sale provides for the sale of property for \$100 per unit actual freight prepaid and added to the sales price.

(c) Examples of Application of Tax. All deliveries are by independent carrier.

All billings are in accordance with the terms of the contract.

- (1) The contract for sale provides for the sale of property for \$100 per unit delivered to the purchaser with freight prepaid.

Tax applies to sales price of \$100 per unit with no deduction for freight charge since the freight charges are not separately stated. The contract is for a delivered price and requires delivery to the purchaser. Title does not pass to the purchaser prior to delivery.

- (2) Contract for sale provides for the sale of property for \$100 per unit. The retailer is required to ship the property to the purchaser freight collect.

Tax applies to \$100 per unit since the responsibility for the payment of the freight is upon the purchaser, and the seller makes no charge for freight. Since the carrier will bill the purchaser for the actual freight charge, there will be a separate statement of the freight. The property is not sold for a delivered price.

- (3) The contract for sale provides for the sale of property for \$100 per unit freight collect and allowed.

The measure of tax is \$100 per unit less the amount of the freight paid to the carrier and shown on the payment voucher sent to the retailer by the purchaser.

The sale is for a delivered price. Separately stated transportation charges are excludable from the measure of tax since the transportation occurred after the sale of the property. If the contract for sale explicitly provided for passage of title upon delivery to the destination, then the measure of tax would be \$100 per unit since the sale was for a delivered price and title did not pass prior to transportation.

- (4) The contract for sale provides for the sale of property for \$100 per unit plus actual freight of \$10 per unit. Any increase or decrease in the freight is for the account of the buyer.

Tax applies to \$100 per unit since the contract is not for a delivered price and shipment is by independent carrier.

- (5) The contract for sale provides for the sale of property for \$100 plus freight of \$10, and the seller guarantees the price will not exceed \$110.

Tax applies to \$100 because the sale is for a delivered price and there is no showing that title was to pass upon delivery at the destination. A contract will be construed as a shipment contract unless it expressly requires delivery at destination point. If the contract for sale explicitly provided for passage of title upon delivery to the destination, then the measure of tax would be \$110 since the sale was for a delivered price and title did not pass prior to transportation.

- (6) The contract for sale provides for the sale of property for \$100 per unit freight equalized with x city. The invoice shows 10 units at \$100 per unit, \$1,000, freight from x city \$100, total \$1,100.

Under these circumstances, tax applies to \$1,000 since the only separate statement of freight is the freight equalized with x city in the amount of \$100. If the actual freight paid to the carrier for the transportation of the property from the retailer's place of business or other point from which shipment is made directly to the purchaser is less than \$100, the exclusion will be limited to the amount paid to the carrier.

- (7) Assuming the same facts as above, except the invoice shows 10 units at \$100 per unit, \$1,000, freight equalized with x city \$100, total \$1,100. The invoice also shows the notation, "Actual freight prepaid from point of shipment to destination is \$200."

The sale is not for a delivered price. On the basis of the above billing, a separate statement of freight is made in the amount of \$200. Accordingly, the measure of tax is \$1,100 minus \$200, or \$900.

NOTE

Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6010, 6010.5, 6011 and 6012, Revenue and Taxation Code.

HISTORY

1. Renumbering from Section 2028 filed 11-3-71; effective thirtieth day thereafter (Register 71, No. 45). For prior history see Register 65, No. 23.
2. Amendment filed 11-16-71; effective thirtieth day thereafter (Register 71, No. 47).
3. Amendment filed 11-13-84; effective thirtieth day thereafter (Register 84, No. 46).
4. Amendment filed 5-22-89; operative 6-21-89 (Register 89, No. 21).
5. Amendment filed 6-19-95; operative 7-19-95 (Register 95, No. 25).