



STATE BOARD OF EQUALIZATION

916-323-7711

July 14, 1983

[X]

Dear [X]:

Your May 26 letter to the Legal Section of the Board of Equalization has been referred to me for reply. You raise the following question:

Is [X] liable for sales tax on the separately stated COD charges since it is merely complying with a Post Office regulation to prepay a fee for which it receives reimbursement which is merely an advance for the customer due to Post Office regulations?

You relate that [X] operates photographic studios. Customers, after seeing portrait proofs, may either pay the full amount of their order in advance, or may pay a deposit in advance and pay the balance due for the portraits plus C.O.D. charges when the Post Office delivers the portraits to the customer. As you point out, postal regulation (Sections 913.22 and 914.621 of Domestic Mail Manual) require [X] to prepay the Post Office's C.O.D. charges, which the Post Office then will reimburse to [X] when the Post Office collects the C.O.D. charges from customers. The "sales price" for the portraits does not change depending on which payment method is selected by the customer, but the postage and C.O.D. charges are additional expenses incurred by [X] and are separately itemized by [X] in each case in its billing to its customers.

Sales and Use Tax Regulation 1632 (title 18, Calif. Administrative Code) requires [X] to pay sales tax on the C.O.D. charges. Regulation 1632 provides that:

"On and after July 1, 1970, tax applies to any C.O.D. fee paid by the retailer's customer on taxable C.O.D. fee paid by the retailer's customer on taxable C.O.D. sales except where the C.O.D. fee is not included in the invoice and the carrier collects it from the retailers customer and retains it."

The exception provided in Regulation 1632, where the C.O.D. fee is not included in the invoice and is collected and retained by the carrier from the retailer's customer, is not applicable under the facts you relate.

The reason that Regulation 1632 includes C.O.D. charges in the measure of tax is that these charges are not transportation charges, but rather are collection charges paid to the Post Office acting in effect as a collection agent for [X]. While these charges are for a service, the collection service is an integral part of the sale of the portrait photographs, when the customer elects this method of payment. The risk of the customer's nonpayment of these charges falls on [X], not the Post Office, as a result of the postal regulation which requires prepayment of the charges by [X]. While it is true, as you state, that a customer may perceive that he is paying the Post Office for the service, in fact, [X] has already paid the Post Office for the service.

Please note that separately stated transportation charges, including postage, are excludable from the measure of tax under the conditions specified in Regulation 1628 (enclosed for your information). [X] should properly exclude separately stated postage from tax, regardless of which method of payment the customer selects.

Very truly yours,

John Abbott
Tax Counsel

JA:ss

Enclosure