

## **295.0000 GROSS RECEIPTS**

*See also Bad Debts; Barter, Exchange, "Trade-ins"; C.O.D. Fees; Sound Recording; Installing, Repairing, Reconditioning in General; Leases of Tangible Personal Property—In General; Photographers, Photostat Producers, Photo Finishers and X-ray Laboratories; Service Enterprises Generally; and Transportation Charges. Federal taxes, inclusion of, see Federal Taxes. Tips, see also Taxable Sales of Food Products.*

### **(a) GENERAL**

**295.0020 Adjustment of Purchase Price.** A manufacturer sells trailers to its wholly owned subsidiary, which leases the trailers to others. When a particular trailer is transferred to the subsidiary, the manufacturer makes out an invoice indicating an arbitrary amount as the selling price. At the end of the fiscal year, the manufacturer determines its actual production costs and charges the subsidiary the difference between the originally invoiced amount and an amount which includes all of the manufacturer's costs for overhead, labor, materials, plus an amount for profit. The adjusted selling price, including the additional charges for overhead, labor, materials, and profit, as redetermined by the manufacturer, is the taxable purchase price to the subsidiary. 10/11/67.

**295.0022 Advance Payments by Vendor.** A customer agrees to use a vendor as its exclusive supplier for the fabrication of positive release prints to be used by the customer in the distribution of motion pictures. The vendor will bill the customer at its regular list price. The vendor agrees to pay the customer a stated sum upon execution of the agreement. The vendor also agrees to pay the customer an amount equal to 15 percent of the total amount of all invoices. The amount is to be paid to the customer monthly.

Under these arrangements, the advance payment and the monthly payments are in the nature of an interest-free loan. Thus, the payments made by customer would consist of two components, the return of the advance payment and a payment for services rendered. In other words, the measure of tax consists only of the net amount paid by customer, which, in this case, is the contract amount less the return of the "advances." 3/23/90.

**295.0027 Air Filters—Sale and Installation.** A taxpayer will furnish, deliver, and sometimes install air intake filters for heating and air conditioning systems. The customer will sign a one year contract for the furnishing and delivery, or for the furnishing, delivery and installation of filters. The drop-off service is \$19, which includes delivery of the filter to the customer's door by taxpayer's service technician, but not installation. The installation service is \$29, which includes furnishing, delivery, and installation of the filter by taxpayer's service technician.

The contract for the delivery of the filters for the \$19 charge is for the retail sale of tangible personal property, and the full \$19 amount billed to the customer for delivery of each filter will be subject to sales tax.

In this case it seems the difference between the \$29 including installation fee and the \$19 charged without installation is solely for "labor or services used in installing or applying the property sold." The amount of this installation charge, \$10, is not taxable pursuant to section 6012(c). However, \$19 of the taxpayer's \$29 charge to the customer is taxable gross receipts from the sale of the filter which the taxpayer installs. 7/14/95.

**295.0029 Art Direction, Standby, and Strike Labor.** The following are services performed in connection with the sale of a set used in commercials and are considered to be services that are a part of a sale of tangible personal property and subject to tax:

(1) Art Direction. Art direction consists of positioning the set and ordering any changes to the set during the shooting session.

(2) Standby. Standby is labor charges at the site to make any necessary changes to the set ordered by the art director.

(3) **Strike.** Strike is labor charges to disassemble and dispose of the set.

Any charges for adjustments or alterations to the set are charges for continued fabrication of the set for its use at the site. Art director facilitates the use of the set. Strike labor disassembles the set and disposes of it. As such, they are services intrinsically linked to the sale of the set. 6/15/93.

[295.0030](#) **Auction Sales—Buyer’s Premium.** A seller consigns goods for sale at auction, after agreeing to pay the auctioneer a certain percentage of the sale price. The auctioneer also announces to the buying audience that a 10% buyer’s premium will be added to the purchase (bid) price, which will be retained by the auctioneer. If a person is the successful buyer of an item for a bid of \$100, the buyer will pay to the auctioneer \$110. The gross receipts from the sale include the buyer’s premium. Tax applies to the entire \$110 paid by the buyer to the auctioneer. 3/16/88.

[295.0035](#) **Autographs on Baseball Cards.** The application of the sales tax to autographs on baseball cards is shown in the following situations:

(1) If a vendor sells a baseball card (value \$5) and the pictured player is present to autograph the card (value \$30), for one lump sum price of \$35, the entire \$35 is subject to tax.

(2) If a vendor sells a baseball card for \$5 and as an option, the customer may pay an additional \$30 to the vendor to have the player sign the card, sales tax applies only to the \$5 charge for the baseball card.

(3) If a vendor sells a baseball card for \$5 and then the customer takes the card to another table that is run by the show promoter where the player will sign the card for a \$30 fee, sales tax applies only to the \$5 charge for the baseball card. 12/5/90.

[295.0035.180](#) **Balloons and Balloon Decorations.** A taxpayer operated a business which sold balloons, rented helium tanks and provided balloon decorations. Decorations consisted of balloon arches which were installed or assembled on site. Charges for materials and labor were separately stated. Although the decorations involved artistic workmanship, the labor charge was taxable as a charge for labor related to the sale of tangible personal property. 4/4/94.

[295.0035.200](#) **Birthday Balloons.** A firm delivers balloons for birthdays or other special occasions. The person making the delivery is dressed in costume and delivers the balloons together with a song such as “Happy Birthday.”

The sale is a combination sale of a nontaxable theatrical performance and a taxable sale of balloons. A reasonable allocation which represents the sale of the balloons should be made. 4/28/86.

[295.0035.820](#) **Cash Redemption Value (Recycling Fee).** The Cash Redemption Value (CRV) fee applies to nonrefillable containers such as those used for beverages. The CRV is imposed upon the wholesaler, who passes the cost on to the retailer, who passes the cost on to the purchaser of the beverage. Therefore, the CRV amount is an expense to the retailer and a part of the “gross receipts” collected from its customer.

The CRV law requires the retailers to separately state the CRV amount in advertising and on shelf-pricing, and retailers are permitted (but not required) to add the amount as a separate amount at the cash register. The CRV amount is not a true deposit for sales and use tax purposes because the CRV amount is not returned by the retailer to the customer, but is recovered from a third party at the recycling center. There is no exclusion for the CRV amount from the measure subject to sales or use tax, even though those amounts may be itemized to the customer and the amount is therefore included in the measure of tax. 7/10/96.

[295.0035.900](#) **Catalogs.** A company sells for resale various items of tangible personal property. It also sells catalogs of its products and advertising materials to its dealers, usually at retail. The dealers earn credits during the month based on the volume of purchases they have made (for resale.) The dealers can use these credits to reduce the charges they pay for the catalogs and advertising material. The measure of tax

for the catalogs and advertising material sold at retail is the amount billed before the deduction of the credits being applied. 6/28/89.

[295.0036.100](#) **CD ROM Replication.** A person's charges for duplicating computer programs provided by its customers onto one or more CD ROM's are subject to tax. 5/29/97.

[295.0036.750](#) **Charge for Cleaning and Testing Returnable Containers.** A taxpayer is in the chemical distribution business. The chemicals are sold in returnable containers (poly returnable drums and totes). The taxpayer charges its customers a cleaning and testing fee of \$5.00 per container. The containers will be cleaned and tested by the taxpayer's branch personnel at the branch where the container is returned by the customer. This charge is required, not optional. The fee will appear as a separate line item within the body of the invoice to the customer when containers are returned.

Since the \$5.00 charge is required, the charge is a condition of purchasing the chemicals from the taxpayer and 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 the chemical and included in the measure of tax. In other words, tax applies to the total amount of the sale price of the chemicals sold to the customers, including the \$5.00 charge for cleaning and testing unless the sale is specifically exempt from taxation by statute. 6/27/96.

[295.0037](#) **Charges for Testing and Calibrating a Laser Printer.** A purchaser contracts with a vendor for a laser printer. The printer is connected to the purchaser's computer by the seller's technician. In addition to the hook-up, the technician tests and calibrates the printer. The charges for testing and calibration are taxable, while charges for actual installation are not. The charges for the testing and calibration are taxable even if the seller contracts for them with a third party. 6/20/94.

[295.0037.400](#) **Charitable Deduction.** A ticket for a wine and cheese tasting event to raise funds for a charitable organization was sold for \$25. The ticket indicated that \$15 was deductible as a charitable donation. Under these circumstances the \$10 is the measure for sales tax purpose. 6/30/89.

[295.0038](#) **Compensation from Advertisers.** Taxpayer publishes maps on behalf of a local Chamber of Commerce. No payment is received directly from the Chamber of Commerce, but the publisher is compensated out of proceeds from the sale of advertising on the maps. The Chamber of Commerce authorizes publisher to receive payment directly from the advertisers.

The publisher is selling the maps to the Chamber of Commerce and the amounts paid by the advertisers are paid on behalf of the Chamber of Commerce for the publications of the maps. The amounts received by the publisher from the advertisers are taxable gross receipts. 11/21/91.

[295.0040](#) **Computer Billing Service.** A corporation specializing in computerized billing and management activities for law firms on a contractual basis for a monthly fee is not subject to sales taxes on the fee. Also tax-exempt is the initial charge made to convert the law firm to the new system. However, sales of statement paper bearing the law firm's letterhead to be used for billing are subject to sales tax, and as the retailer, the computer services firm would need a seller's permit. 7/30/76.

[295.0045](#) **Conference Center Rentals.** A company has a conference center which it rents to individuals or companies to hold seminars/conferences. At the conferences, meals are optional and available at a separate charge.

Assuming that the patrons pay the same rental rate whether or not meals are purchased, charges for rental of its conference center are not included in the gross receipts from the sales of the meals. 4/7/92.

[295.0050](#) **Confidential Shoppers.** An owner of restaurants is selling meals to individuals under contract to it to operate as confidential shoppers at its selected restaurants, notwithstanding the individuals provide the owner with a report of the quality of the restaurants visited and are fully reimbursed for the meals purchased. 11/24/76.

**295.0060 Confiscated Receipts.** Receipts from bar sales which have been confiscated by a keeper placed on the premises by creditors of a preceding manager are includible in the taxable gross receipts of the present manager since the sales were made by an employee of his while he was managing the business. The tax is imposed upon the privilege of selling tangible personal property at retail and hence the disposition of the money after the sale would not alter the tax liability. 6/15/65.

**295.0064 Consulting and Architect Services.** The taxpayer, a licensed architect, contracts to assist a customer in facility planning, designing, scheduling, budgeting, contracting, and purchasing of furniture and equipment for expansion into new facilities. The furniture and equipment placed in the new facility consist of existing used items transferred from existing facilities and items purchased and resold by the taxpayer to its customer at cost. The taxpayer hires independent third party service providers to install and assemble the new and used furniture and equipment at the new facility. The taxpayer separately bills the customer for the installation charges of the third party service providers.

Under these facts, the taxpayer may deduct from taxable gross receipts its charges for professional consulting and architectural services. However, all of the taxpayer's charges which are related to the acquisition and sale of the furniture and equipment are includable in the taxable gross receipts without any deduction for the cost of the property sold, the cost of materials used, labor, or service cost or any other expense. Thus, the measure of the sales tax of the furniture and equipment would be taxpayer's cost plus its charges related to the sale of the furniture and equipment.

The taxpayer may deduct from the gross receipts the charges for the third party service providers installing the furniture and equipment, but charges for assembly are includable in taxable gross receipts. 1/13/94.

**295.0065 Consulting Services.** Separately stated charges for consulting services by a machine shop made in conjunction with the fabrication of parts by the shop are part of gross receipts subject to tax.

Charges for consulting where no products are delivered are not subject to tax. 6/30/92.

**295.0070 Contracts Sold at Discount.** A used car dealer is required to remit the full sales tax computed on the purchase price of a used car and not on the discounted sale price of the contract sold to a third party. 8/22/74.

**295.0080 Contributions to Charitable Organization.** A charitable organization, which distributes special books printed in oversize type to school districts, libraries and institutions for use by partially-sighted children, purchases the book components tax-paid. It solicits contributions for its cost from distributees and others, but distributees are under no obligation to make contributions.

Inasmuch as the organization's receipts from distributees' contributions are substantially less than its cost of book components (15 percent) and distributees are not obligated to make contributions, the organization is the consumer of the books and not the retailer thereof and the contributions are not taxable gross receipts. 10/4/65.

**295.0090 Co-Op Fees** Members of a buying group are required to pay an annual membership fee. In addition, members are required to pay an additional forced amount, with each purchase, for the purpose of enhancing the working capital of the Co-op. Members can receive a refund of the additional charge, if the amount paid exceeds the required minimum based on their level of participation or if they leave the Co-op. The additional forced amounts, charged with each purchase are "gross receipts" and includable in the measure of tax. 12/14/89.

**295.0100 Copy Charges.** A company which publishes an annual directory in which selected firms of attorneys publish a professional card and receive a copy of the directory for a charge which is based upon the population of the city or town in which a firm is located is furnishing both a service and selling tangible personal property (copies of the directory). Part of the purpose of such a directory is to enable those firms which receive the directories to use them when they need to locate counsel in other areas. The company is liable for that portion of gross receipts which are attributable to the publication of the directory, but, since it

makes no charge for the replacement of lost or damaged directories, it has no replacement cost. Hence, the measure of the tax is the publishing firm's cost of publication. 4/22/69.

[295.0101 Copying Charges.](#) The single per-copy charge for the use of a tax-paid copy machine by another person is taxable because the charge is for the transfer of title to the copy. 9/5/76.

295.0120 “**Corkage.**” Opening and serving customer-furnished champagne constitutes a sale, and charges for this are includible in taxable gross receipts. 8/4/67.

[295.0140 Correspondence Courses.](#) Tax applies to books and lesson materials furnished to students in connection with a correspondence course. If the price of the books and materials is not separately stated, the tax applies to their fair retail selling price. The school may purchase all such books and materials for resale. Tax does not apply to books and materials mailed to an out-of-state student. 10/23/53.

[295.0153 Coupon Incentive Plan.](#) In compliance with an order by the California Public Utilities Commission to establish programs that encourage the conservation of natural gas, a utility company proposes to establish a coupon incentive plan. Under this plan, the utility company will distribute coupons to its customers which can be used to reduce the purchase price of certain energy saving measures at participating retail stores. The retailers will reduce the cost of the item by the redemption value of the coupon. They will then be reimbursed by the utility company for the face value of the coupon plus a small handling fee. The utility company itself may sell certain of the items to purchasers on the same basis as sales made by other retailers.

The application of the sales tax to sales of energy saving measures sold by the utility company and by participating retail stores is as follows:

(1) The utility company as retailer: The utility company does not receive its full selling price on the sale. The price is discounted to the extent of the value of the coupon issued by the utility company to its customer. Taxable gross receipts of the utility company are therefore the retail price reduced by the value of the discount allowed and taken on the sale. (Section 6012(c)(1).)

(2) Sales by participating retail store: The retailer receives the full selling price of merchandise from the customer (i.e., cash plus a coupon redeemable at full value from the utility company.) The gross receipts of the retailer includes the cash received as well as the coupon value. 6/25/81.

[295.0160 Coupons](#) sold through solicitors for which photographer allows a credit upon purchase of photographs, amount charged for is part of gross receipts from sale of photograph. 4/4/50.

[295.0168 Court-Ordered Settlement.](#) Amounts returned to a buyer pursuant to a court-ordered settlement are not considered price adjustments which alter the original sales price, but rather are in the nature of damages. 9/13/89.

[295.0175 Coupons Received in Settlement of Law Suit.](#) In settling a class action case, an association agreed to issue coupons with a face value of \$150 which the plaintiffs could use as payment towards a purchase or lease of a vehicle. The coupons may be redeemed at any dealer who is a member of the association. These coupons are in the nature of third party coupons and derive their values from the settlement agreement. It is not a voluntary reduction in price. Additionally, the cost of the redemption is to be shared in whole or in part by the association. The coupons represent taxable gross receipts. 5/16/97.

[295.0180 Credit to be Issued to a Customer](#) Due to the fact that the full order was not shipped should include credit for the sales tax on the amount of the adjustment, as this situation should be regarded as the correction of a mistake, with the tax applying only to the corrected amount. 12/15/52.

[295.0200 Customer-Furnished Equipment Included in Sales Contract.](#) If a customer delivers the bill of sale for equipment owned by him to a dealer who sells new equipment to the customer under a sales contract, and the proceeds from the finance company in excess of the price of the new equipment are

remitted to the customer, the sales tax applies only to the price of the new equipment. The customer's property included in the sales contract provides the finance company with additional security and it is not in any realistic sense sold by the dealer to the customer. Since the sales contract, as reported to the finance company, is sought to be disregarded, the dealer should keep sufficient documentary evidence to show the actual facts. 12/26/58.

**295.0210 Damages.** The stated contract price for the sale of tangible personal property is the measure for establishing sales or use tax despite the existence of a liquidated damages clause in the sales contract for breach of various terms contained in the agreement. An award made by the seller to the purchaser for breach of contract by the seller based upon a liquidated damages clause in the contract has no effect on the sales price, itself. 7/30/76. (Am. 2004-2).

**295.0220 Disposition of Gross Receipts—Effect of.** When a painting is sold for a stipulated price, the artist receiving part of the selling price and a charitable organization receiving the remainder, the sales tax applies to the total price. The disposition of the proceeds of a sale does not affect the application of the sales tax to the gross receipts from the sale. 2/11/66.

**295.0222 Document Delivery Service by University Law Library.** A university law library will start a document delivery service to local law firms. A standard fee of \$7.50 will be charged for each item requested, plus \$.25 for each photocopy made. \$1.00 will be charged for postage and handling. If the photocopies are faxed, a charge of \$.75 for each page faxed will be added. Rush or off-hour requests also have a special additional charge.

Tax will apply to the standard fee of \$7.50 and to the \$.25 per page charge for the photocopies. Tax also will apply to the special additional charge for rush and off-hour requests. If a separately stated charge is made for "postage and handling," only that portion of the charge which represents actual postage may be excluded from the measure of tax, in accordance with Regulation 1628.

When the printed material is transmitted over telephone lines by fax and no photocopy is provided, tax does not apply to the amount charged. It (faxing) is considered a nontaxable service. 10/30/89.

**295.0225 Driver Source Code.** Company A is planning to contract the development of a software product from Company B. Company B will purchase an unlimited source code for Company A from the manufacturer, modify the driver source code, and deliver the original and modified source to Company A at project completion.

It appears that Company B merely acts as an agent on behalf of Company A in acquiring the program from the manufacturer. If this is true, the relevant transaction is the transfer of the program from the manufacturer to Company A. Tax does not apply to the amount paid for the license or royalties by Company A to the manufacturer for the transfer of the program to Company A if the transfer is to provide Company A with the right to reproduce and copy a program to which a federal copyright attaches in order for Company A to publish and distribute the program regardless that Company A has Company B modify the program to be compatible with Company A's application. 8/31/92.

**295.0228 Environmental Drum Cleaning Fee.** A taxpayer sells petroleum products and collects a separately stated amount identified as environmental drum cleaning fee on each 55 gallon drum that it delivers with product to purchasers as reimbursement for associated reconditioning and environmental cost. This fee is taxable as a charge for a service in connection with a sale. 8/14/96.

**295.0231 Firewood.** The sale of firewood is subject to tax. 2/3/94.

**295.0235 Flower Arranging.** Charges for making or fabricating flower arrangements are subject to tax as services which are part of the sale of the flowers. Charges for services such as visits to the site, consultations with customers, design, layout, and rentals of equipment are taxable. 7/6/94.

[295.0260](#) **Fungible Goods Credit.** For the manufacturer of drill bits, “used” industrial diamonds are fungible with “new” diamonds of similar size and quality. Usable diamonds salvaged from customers’ returned drill bits are credited to their accounts by carat weight and commingled with similar diamonds held by the bit manufacturer. Under these circumstances, the carat weight credit may be regarded as a return of the customers’ diamonds, and excluded from gross receipts, when it is applied against the weight of diamonds in a subsequent sale of a newly manufactured bit to that customer. 5/29/69.

295.0270 **Gross Receipts from Sales of ATM Machines.** A premium is added to the retail sales price of an ATM machine based upon the desirability of its location. If the ATM machine is sold as tangible personal property, the premium must be included in the taxable gross receipts. 4/2/01. (2002–1)

[295.0290](#) **Growing Fees.** Fees for growing plants or trees are not subject to tax as fabrication labor. However, if the seller of the seeds or seedlings purports to transfer title for a stated unit price and further contracts to grow and raise the seedlings to a transplantable stage for an additional unit price, such charges are part of the sale of tangible personal property. The true object of the two contracts is for the transfer of a transplantable tree. On the other hand, if a person sells transplantable trees, but extenuating circumstances prevent the buyer from taking delivery (e.g., lack of field preparation), additional optional charges for maintaining the trees are not includable in the measure of tax. (See also Annotation 515.0720.) 5/4/71; 10/19/73; 4/17/78.

[295.0300](#) **Guaranteed Profits.** As an incentive to new service station operators, an oil company guarantees the monthly profit of the operator by paying him the difference between the guaranteed profit and the actual profit if the actual profit is less than the guaranteed profit. The difference paid by the oil company to the operator is not part of the service station’s taxable gross receipts because the payment is neither directly related to the sale of the gasoline nor a consideration for the transfer of title to the gasoline. The payment is more in the nature of a rebate payment than a subsidy because the oil company is the principal vendor of the operator who retails the gasoline. 10/22/69.

[295.0315](#) **Hospital Cooperatives.** An entity provides product standardization, cooperative purchasing and centralized distribution services to hospitals which become members. As long as the hospitals participate only as consumers and do not purchase items for resale from the entity, the entity will qualify as a consumer cooperative, inasmuch as the hospitals are consumers. Under the statute, “consumers” are not limited to natural persons. Thus, a cooperative may be formed by legal as well as natural persons. However, such persons must participate in the cooperative only as consumers. 5/31/94.

[295.0320](#) **Hostess Credits.** Retailers giving credit to hostesses for holding parties, inviting friends, and delivering merchandise, may not deduct the amount of the credit from the measure of tax. The efforts of the hostess are bargained for and given in consideration of the credit. Cancelling the credit in return for merchandise constitutes consideration for the transfer of the property and represents taxable gross receipts at the value placed on the credit by the parties. 3/7/66.

[295.0325](#) **Hostess Premiums.** A company’s brochure pictorializes to the hostess the merchandise that can be earned under the various premium awarding categories. Each item of merchandise has a dollar value printed under its picture. The majority of the premiums are also available for purchase through the customer catalogue at the same amount as the premium is valued to the hostess. There is no other written or oral agreement between the parties regarding the valuation of the premium. The sales representative earns an average 35% commission on all orders taken.

The measure of tax for sales of premiums by the company in exchange for classes or sales parties provided by the hostesses is the value of the service performed by the hostess in exchange for the various items sold by the company to the hostess. The premium catalog which the company provides to prospective hostesses lists the various premiums available to the hostess for giving classes, and the catalog designates a dollar value for each premium. The catalog value generally equates to the company’s retail price of the product. Absent any express agreement as to the value of the services provided by the hostess, the stated values of the premiums represent the value of the services as arrived at by the free negotiation of the parties. 5/6/86.

[295.0330](#) **Hostess Premiums Exchanged for Services.** Where hostess premiums are exchanged for services, absent any express agreement as to the value of the services provided, the stated value in dollars of the premiums in catalogs represents the value of the services as arrived at by the free negotiation of the parties. This stated value is the gross receipts from the sale of the premiums. 5/6/86.

[295.0340](#) **Independent Contractor.** The sales tax applies to the weekly retainer paid by newspapers to a photographer as independent contractor rather than as employee, who is paid on an hourly basis regardless of the number of pictures taken, and delivers exposed film to the newspapers. 11/6/57.

[295.0360](#) **“Inflated” Down Payment.** A vehicle is sold for \$1,000 but contract shows purchase price of \$1,500 with a \$500 down payment. The \$500 is never in fact paid by the purchaser nor is it ever intended that it should be paid. Transaction is handled in this manner for the purpose of obtaining financing from a finance company.

If there is no trade-in, the measure of the tax is \$1,000 unless customer is charged sales tax on \$1,500, then the \$1,500 becomes the measure of the tax.

If property is traded in as part payment of the price, the measure of the tax is the full \$1,500.

In some cases, the sales price may be written down and the entire down payment not shown on the contract. For example, upon the sale of a \$1,500 vehicle with an \$850 down payment, the contract will reflect a purchase price of \$1,000 with a \$350 down payment. However, since seller has received \$850 plus purchaser's promise to pay an additional \$650, the measure of the tax is the full \$1,500. 3/12/54.

[295.0361](#) **Installation and Testing Charges.** A manufacturer purchases equipment specifying that title will pass following installation by the seller and successful on site testing. Separate charges are made by the seller for installation and for testing. Installation charges are not subject to tax, but testing charges are. 6/20/94.

[295.0362](#) **Intercompany Transfer.** Company C extended substantial credit to Individual B as well as company T and company R, both of which were owned by Individual B. Company A, which was an affiliated corporation of Company C, leased equipment to Companies T and R as part of an accommodation to its affiliate C.

Subsequently, Companies T and R defaulted under their lease agreements with A. Since the leases were entered into by A as an accommodation to its affiliate company C, C made an inter-company transfer of approximately \$315,000 to A. This amount represented the balance of A's investment in the leases. A, in turn, assigned to C, on a nonrecourse basis, all of its interest in the leases.

The inter-company transfer of the \$315,000 was not a bargained for exchange for the assignment of the lease and the underlying property, particularly in light of the leased equipment being abandoned. Rather, it represented a prior promise to pay off the lease if the lessees defaulted. However, C did receive title to the leased property. Accordingly, a portion of the payment was for the property. The amount attributed to the gross receipts from the sale is the salvage value of the property. 4/16/91.

[295.0365](#) **License to Use Music Furnished for Reproduction on Customer's Tapes.** An owner of tape recorded music who has not paid tax or tax reimbursement on the finished tapes at the time he acquired them makes a taxable lease of the tapes and the measure of tax includes charges for a license to use the music where he furnishes the tapes to a customer or to a sound laboratory at the direction of the customer with the understanding that the sound laboratory will record the music on tapes furnished by the customer and bill him accordingly, that the original tapes will then be returned to the owner, and that the owner will charge the customer for a license to use the music.

The same result follows where the owner rents the tapes to a customer for a specified, annual charge and then charges him also for a license to use the music when and if such use is made.

The charges by the sound laboratory are also subject to tax. 11/12/74.

**295.0367 Liquidated Damage Payments.** A firm contracted to fabricate and install an electrical transformer. The contract was for a lump sum and provided for liquidated damages to be deducted from the contract price if the contractor failed to complete the project by a specified date. Liquidated damage payments or credits paid by the seller to the purchaser do not reduce the gross sales price for sales and use tax purposes. Liquidated damage payments are a convenient formula for determining civil damages payable for breach of contract. (Revenue and Taxation Code sections 6011 and 6012.) 6/23/93.

**295.0368 Liquidated Damages.** The stated contract price of tangible personal property sold is the “sales price” subject to use tax without regard to the fact that a breach of certain terms of the contract by the seller may occasion the operation of a liquidated damages provision. The selling price of tangible personal property is not affected by a payment by the seller to the purchaser in settlement for claims for damages by the purchaser. (See *Southern California Edison Co. v. State Board of Equalization* (1972) 7 Cal.3d 652). This same rule applies even where the parties characterize the settlements as “voluntary price adjustments.” A liquidated damages provision may not be regarded for sales and use tax purposes as a pricing mechanism. 7/30/76; 8/26/04. (Am. 2004–2).

**295.0369 Liquidated Damages.** XYZ Company enters into a supply contract to purchase tangible personal property from ABC Company. XYZ is obligated to purchase a minimum number of ABC’s product per month at a set dollar amount per unit. The agreement stipulates that should XYZ fail to purchase the minimum number of units for a given month, XYZ is required to pay ABC a penalty amount as determined by a formula agreed to by both parties. ABC does not begin production of the units until it receives XYZ’s monthly order form. Therefore, there is never an excess supply of units and XYZ cannot subsequently purchase units for which it was required to pay a penalty.

When the purchaser makes payments for damages to the retailer, the question becomes whether or not these payments are part of the gross receipts from the sale of tangible personal property. Inclusion of payments for damages in gross receipts depends on whether the damage payments are also a part of the consideration for the transfer of title or possession of the tangible personal property. If they are, absent a specific statutory exclusion from gross receipts or sales price, the damage payments are included in the measure of tax.

To the extent that the above supply agreement provides for damage payments to be made to ABC in the event of a breach of the agreement by XYZ, the agreement contains a liquidated damages clause. When XYZ makes a monthly purchase order for less than the minimum units required, this clause operates to increase the cost per unit because it increases ABC’s retail selling price by the agreed-to penalty amount. Therefore, when XYZ places its monthly order it must take into consideration that it will cost more per unit to purchase fewer units than required under the agreement. As a consequence, the penalty amount set forth in the liquidated damages clause is part of the bargained-for consideration for the transfer of title to or possession of the units. Accordingly, when the purchaser breaches the agreement by not ordering enough units, the damage payment required by the agreement is included in the measure of tax as part of the gross receipts from the taxable sale of the units.

An exception to the above conclusion occurs when XYZ does not order any units in a particular month but is still required to pay damages to ABC. When there is no transfer of tangible personal property, the damage payment is not subject to tax. 8/26/03. (2004–2).

**295.0370 Lump-Sum Contract.** The total contract price for the purchase of glass laminating manufacturing equipment from an out-of-state seller was subject to use tax, even though part of the price was designated as payment for trade secrets, know-how, and technical information, because there was a single integrated agreement for the sale of the machinery and “know-how.” 11/19/70.

**295.0373 Lump-Sum Fee Includes Audio and Video Tapes.** A taxpayer is engaged in operating and franchising weight loss centers and providing customers with individual counseling, lifestyle classes, and reference materials on weight loss and weight maintenance. Food is purchased separately and sales tax is

paid on the sale of taxable food products. A one time fee is presently charged to customers, varying from \$19 to \$79 depending on whether there is a promotional program in effect.

The taxpayer is now considering charging a lump-sum fee of \$199 which will entitle customers to individual counseling lifestyle classes, extensive reference material, audio tapes and video tapes. Currently the audio tapes are sold separately and the video tapes are not offered for sale. The cost of the tapes is \$9.00 for the audio tapes and \$11 for the video tapes.

Based on this scenario it is clear that the increase in the one time fee is related to the sale of the audio and video tapes. Therefore, the substantial portion of the proposed fee is attributable to the transfer of tangible personal property, and thus, the entire fee is subject to tax as gross receipts from the retail sale of tangible personal property. 1/12/94.

[295.0377](#) **Manufacturer's Fuel Cost Reimbursement to Dealers.** A vehicle manufacturer has a program where its dealers are to ensure that customers receive a full tank of fuel with the purchase of a new vehicle. Dealers are reimbursed for their cost, based on the difference between the vehicle's fuel tank capacity and the number of gallons placed in the tank at the factory. Gasoline in the tank of a vehicle at the time of sale is considered to be sold as part of the vehicle because title and possession of the fuel transfers to the buyer along with the vehicle. In this situation, the manufacturer is asking dealers to promote the program by requiring a full tank of fuel with the sale of all new vehicles. The credit granted by the manufacturer under the above fuel tank program should be characterized as an adjustment to the purchase price of the vehicle and not part of the dealership's gross receipts. 7/13/88; 5/20/96.

[295.0378](#) **Manufacturer of Circuit Board.** The manufacturer's testing of circuit boards is a part of its manufacturing process in order to sell or lease the board to its customers. Therefore, tax applies to its charges for testing whether or not these charges are separately stated on the manufacturer's invoice to its customer. 6/25/97.

[295.0379](#) **North Atlantic Treaty Status of Forces Agreement (NATOSF).** A member of Spain's Air Force claims that his purchase of an automobile from a dealer is not subject to sales tax pursuant to Article Ten of the North Atlantic Treaty Status of Forces Agreement (NATOSF). The NATOSF agreement provides NATO personnel who are members of a force under the NATO Agreement may have an exemption from taxation on salary and tangible movable property, that is, from annual recurring taxes such as ad valorem taxes and personal property taxes based on residence or domicile of the taxpayer in this state. Since sales tax is not based upon residence or domicile within a state, but upon transfer of title of property for a consideration, the sale of the automobile is subject to sales tax.

Also, the purchaser's claim that his purchase of the automobile is not subject to tax under Articles 47 and 59 of an agreement between the United States and Spain signed on December, 1988 is not valid. This agreement provides an exemption from Spain's value added tax and import duty taxes for members of the force or civilian components while serving in Spain, and these Articles are inapplicable to a transfer of title to an automobile in California. 9/30/94.

[295.0380](#) **Option to Buy Coins.** When a buyer exercises an option to buy coins, tax applies to the sale since the title of the tangible personal property was transferred to the buyer. Both the price paid for the option right and the price paid to exercise the option are included in the retailer's taxable gross receipts from the sale. If the option is not exercised, the transaction is not taxable, since there is no transfer of title to the property. 5/12/65.

[295.0400](#) **Option to Purchase.** Taxpayer leased a Bailey Bridge to lessee. The bridge subsequently collapsed. The lessee elected to pay for the loss by exercising an option to purchase the bridge rather than repairing and returning the bridge intact. The lessee merely minimized its damage loss by exercising the purchasing option. The correct measure of the tax is the fair market value of the salvage material and not the full "purchase" price. 12/3/62.

295.0408 **Option to Purchase Price—Leased Equipment.** A lessor acquired certain equipment and paid sales tax reimbursement to the vendor. The equipment was then leased for a term of 60 months. The lessee was given an option to purchase the equipment for \$1,000 plus sales tax of \$60. However, the lessee decided to purchase after the first twelve months. The lessor required a payment of \$9,510 plus the option to purchase price of \$1,000 and the \$60 sales tax on the \$1,000.

Under this scenario, the lessor and lessee have entered into a new contract which is to transfer title to the lessee and that tax applies to the entire amount paid by the lessee for transfer of title, less the amount of \$60 that is intended as sales tax reimbursement. Accordingly, the measure of tax on the sale is \$10,510. 8/7/78.

[295.0420](#) **Out-of-State Fabrication.** A fabrication contractor entered into a contract with the City and County of San Francisco to assemble and install in California two generators the parts for which were to be shipped from Germany. However, the contractor had the generators fully fabricated in Germany before shipment to California. The fabrication labor which the contractor purchased in Germany and resold in San Francisco as part of the fabricated generators was subject to sales tax because the intangible labor was for fabrication of tangible personal property. Fabrication charges for labor performed in California and included in the purchase price of the generators would also be taxable if the fabrication were done by the contractor in California. 2/4/70.

[295.0421](#) **Pager Activation Fees.** A taxpayer sells a variety of merchandise including pagers which the taxpayer purchases from a service supplier. A customer may go to any service supplier for activation but the taxpayer's sales clerks encourage customers to complete a written service agreement with the service supplier from which it purchases the pagers. Under the carrier agreements, the customers agree to pay the service supplier a monthly fee for air time and a one time \$10.00 activation fee. If the customer enters into a service agreement at time of purchase, the taxpayer's sales clerk faxes the agreement to the service supplier for immediate approval and activation of the pager which occurs within thirty minutes after receipt of the fax by the service supplier.

The taxpayer charges and collects the \$10.00 activation fee from customers who enter into the service agreements at the taxpayer's stores. A customer who does not enter into an agreement is not charged the fee. The taxpayer remits the activation fee to the service supplier. The service supplier does not reimburse the taxpayer for this service. The service supplier does, however, give a volume discount to the taxpayer based upon the number of pagers it sells.

In this case, the taxpayer charges the same price for the pager whether a customer elects to activate through the taxpayer or not. The taxpayer separately states the charges for optional activation fees on its sales receipts to the customers and the activation does not modify or alter the pager in any manner. In other words, the activation does not involve fabrication or assembly of the pager. Thus, the charges for the activation fees are not taxable. (Section 6012(b)(1).) 6/8/94.

[295.0422](#) **Party Organizer.** A taxpayer is in the business of organizing parties and special events for a fee at which meals, balloons, party favors, or entertainment is furnished to clients. The taxpayer subcontracts the meals to a caterer and pays tax reimbursement to the caterer. It also pays tax reimbursement on the other tangible personal property it purchases (e.g., balloons). The taxpayer is the retailer of the tangible personal property furnished, including meals the taxpayer purchases from a caterer.

The portion of the taxpayer's fee which is related to the sale of tangible personal property including the meals is subject to tax, while the portion attributable to entertainment is not subject to tax. 4/17/95.

295.0425 **Publishing Fees.** A California corporation publishes a book of poems once or twice a year. A poet who wishes to have his/her work appear in the book, pays fees to have the poem, any accompanying photographs, and dedications published, but these fees do not entitle the poet to a copy of the book.

The fees to have poems, photographs, and dedications published are for the purpose of defraying publishing costs and not for the purchase of tangible personal property. Therefore, the fees are not subject to tax. 8/13/90.

[295.0427](#) **Purchase of Property from Proceeds from Forfeited Property Sales.** Tax applies to the sale of tangible personal property to a law enforcement agency which is paid for from proceeds from sales of forfeited property to the same extent as in any other transaction. 4/14/93.

295.0430 **Redemption of Coupons.** Amounts paid by a manufacturer to a retailer in redemption of coupons pursuant to an agreement permitting the retailer to publish the coupons in newspapers and handbill advertisements to be used by the retailer's customers in purchasing the product of the manufacturer, are includable in the retailer's gross receipts. 5/9/73.

[295.0432](#) **Reimbursement for Replacing Property.** A customer contracts with a printer for a job order. After completion of the work, the printer forwards the printed matter to a graphic artist to put the finishing touches on the job. Due to defective work performed by the graphic artist, the job order must be redone. The graphic artist pays for the cost of replacing the printed matter and the customer is billed only for the original specified price. Under these circumstances the act of redoing the original order has no tax consequences to the printer. Tax applies only to the amount billed to the retail customer since it is for the transfer of title to the printed matter.

If the graphic artist must reimburse the retail customer for the amount of the printing order, there is no tax due on this amount. The payment of such reimbursement by the graphic artist is in the nature of "damages," not the sale of tangible personal property. Again, tax applies only to the amount billed by the printer to the customer on the original order. 5/5/93.

295.0435 **Replicas of Original Artwork.** A firm purchased bronze plaques created by an internationally known artist. It plans to make reproductions of the plaques for sales to "sponsors" who will donate them to schools. Although these reproductions are "works of art", they do not qualify for the exemption from tax, as "original works of art," provided by Revenue and Taxation Code section 6365. The exemption is limited to the original artwork itself and does not apply to reproductions. As such, the gross receipts from the sales of these replicas, are subject to tax. 11/9/89.

[295.0440](#) **Retail Selling Price** referred to in second paragraph of section 6007 is selling price charged by out-of-state retailer to consumer, not the charge made by deliverer to out-of-state retailer. 2/6/52.

[295.0462](#) **Royalties.** A contractor purchases equipment to manufacture and erect highway barriers. The contractor also contracts for the seller to provide assistance in using the equipment at a fixed rate per linear foot of barrier. The charge for assistance is not a royalty and is not a part of the sale of the equipment. The charge was for the providing of skilled workmen and is not related to the right of the buyer to use the equipment. Accordingly, the charges for the "per linear foot of barrier" are not subject to tax. 10/29/75.

[295.0480](#) **Royalties.** Where the licensee of a patented process was required to lease certain equipment in connection with the use of that process, the license fees or royalties, as well as the equipment rental receipts, are subject to tax since it appears that the licensee could not use the equipment for the purpose for which it was intended without paying the royalties. 9/21/66.

[295.0520](#) **Royalties.** Royalties required to be paid to vendors in connection with the commercial use of canning machinery, are includable in taxable gross receipts. 2/19/54.

[295.0540](#) **Royalty Charges** for use of music on a sound recording motion picture are part of the sales price of the picture and includable in gross receipts. 5/10/54.

[295.0545](#) **Royalty Fees.** A taxpayer publishes magazines which advertise real property for sale by independent brokers or others. The taxpayer grants exclusive franchises in specified geographical areas for the publication and distribution of the magazine. The property advertised in the magazine is limited to the franchise area. The franchisees pay taxpayer a fee, based on the number of pages, to publish the magazines. In addition to this fee, the taxpayer charges franchisees a "royalty fee" based on a "percentage of the suggested retail price for the pages of advertising." The royalty fee is for "intangible rights such as the

exclusive territorial rights, logos, trade marks, etc.” The “royalty fee” is charged whether or not the taxpayer does the printing.

The “royalty fees” are part of taxable gross receipts when the taxpayer does the printing for the franchisees. Where the franchisees do not purchase printing from the taxpayer, the “royalty fees” are not taxable since there is no sale of tangible personal property. Additionally, if the publication qualifies for tax exemption either as “periodicals” or as “printed sales messages,” the “royalty fee” would be nontaxable. 10/26/90.

**295.0557 Royalty Payments.** A taxpayer sells equipment used in a manufacturing process. The equipment is supplied by a manufacturer who holds the patent on the equipment. After the sale of the equipment by the taxpayer, the manufacturer enters into a separate license agreement with the purchaser. Pursuant to that agreement, quarterly royalty payments for the use of the equipment are paid by the purchaser to the manufacturer. The taxpayer collects the royalty payments on behalf of the manufacturer and is compensated for the collection work by retaining 15% of the royalty payment as a commission.

Royalty payments received in connection with a retail sale of the patented equipment are included in retailer’s gross receipts. In this case, the purchaser could not use the equipment without paying royalties to the manufacturer who holds the patent on the equipment. Under such circumstances, sales tax is measured by the total amount of the sales price of the equipment, including 100 percent of the royalties paid by the purchaser of which 15 percent is retained by the taxpayer. As the retailer of the equipment, the taxpayer must report the royalty payments in the quarter in which the payment becomes due. 6/20/96.

**295.0560 Royalty Payments Based on Units Produced.** Where the inventor of a log peeling device had a peeler fabricated by a machinery company and sold it to a logger pursuant to a contract under which the logger paid a fixed sum for the peeler plus a royalty based on the number of board feet of lumber peeled, the royalty payments constituted part of the taxable selling price of the peeler. Where the inventor granted permission to a machinery company to fabricate a log peeler and to sell it ex tax for a fixed sum to a leasing company, which leased it to a logging company for a stipulated rental, in addition to which the logging company agreed to pay the inventor a royalty based on the number of board feet of lumber peeled, the royalty payments constituted taxable rental receipts. 11/1/65.

**295.0570 Royalties.** The transfer by an artist of original artwork prototypes for use in manufacturing replicas is regarded as a sale under section 6006 and Regulation 1501. Where the consideration for the transfer is royalty payments based on a percentage of the selling price of the replicas as and when sold in the future, such royalties constitute the gross receipts from the sale and are the measure of the sales tax. Therefore, the three-year statute of limitations does not commence to run until the time the consideration is paid. The artist should report the royalties as received, that is, in the quarter in which the amount is made definite. (See *Burnet v. Logan*, 283 U.S. 404 [1930].) 1/4/79.

**295.0570.650 Sale of Orthotics and Prosthetic Devices.** Taxpayer is in the business of providing orthotic and prosthetic devices which are custom fit by the taxpayer’s licensed professionals to meet the needs of each individual patient. All sales are made under prescription from the patients’ physician. The direct material costs equal or slightly exceed direct labor costs, but the charges are commingled for acceptance by Medicare/Medicaid and private insurance carriers. That the taxpayer’s customer may be reimbursed by a medical insurer is not relevant to the determination of whether taxpayer is making an exempt sale. If the sale does qualify for exemption, the taxpayer should obtain from the purchaser an exemption certificate conforming to the requirements of Regulation 1667 and retain it in its own records to support the exemption. If the sale is to Medicare A, it is a sale directly to the United States and is exempt from tax. However, if the patient is reimbursed under Medicare B, that is a sale to the patient, the normal taxation rules apply to determine if the sale was subject to tax. When the sale is not exempt, the taxpayer’s entire charge is subject to tax. Whether separately stated or not, the taxpayer may not deduct its charges for fitting because the fitting devices are part of the taxable sale of taxpayer’s tangible personal property. 4/19/96.

[295.0570.800](#) **Sales of Assets Acquired through Asset Forfeiture Laws.** Tax applies to sales of tangible personal property acquired through asset forfeiture laws to the same extent as any other transaction. 4/14/93.

295.0571 **Sales to Cities.** Sales by retailers to cities (and other political subdivisions) within the state of California are subject to sales tax. Such entities are within the section 6005 definition of 'person' and there is no statutory exemption for sales to them. section 6091 provides: ". . . it shall be presumed that all gross receipts are subject to tax until the contrary is established." The retailer's right to reimbursement for the tax he must pay is governed by Civil Code section 1656.1, which deems it to be a contractual matter. However, regardless of whether the contract does or does not allow for reimbursement, the retailer is liable for payment of the tax on taxable sales. 6/28/89.

[295.0571.100](#) **Sales of Custom Tables.** An interior decorator had custom tables fabricated for a client and also had an artist paint a faux finish on the tables.

Although the client paid the table fabricator directly, the client contracted with the interior decorator for the purchase of the tables. The interior decorator is the seller and has made a retail sale of the tables and must pay tax on the sale. If the agreement or billing separately state the charge for the tables and that charge is the "retail" price, i.e., the cost of the table including artist's fees plus a reasonable markup, that retail price is the measure of tax. If the retail price is not separately stated, the measure of tax is the entire billing unless it can be established that a portion of the fee is for exempt professional decorating services. 1/20/92.

295.0571.900 **Sales of Photographs to School Children.** There is no exemption from tax for the sale of school and sports photographs to school children. Tax applies to such sales. 2/4/94.

[295.0572](#) **Sales by Publicly Supported Television Stations.** The measure of tax on the sale of tangible personal property by a publicly supported television station is the sales price of the property to the television station when the following conditions are met:

- (1) A viewer makes a contribution to a nonprofit, publicly supported television station and receives tangible personal property upon making the contribution.
- (2) The primary purpose of the contribution is to make a donation to support the television station.
- (3) There is a significant disparity between the amount of the contribution and the retail value of the property received in connection with the contribution. If the television station has paid sales tax reimbursement or use tax on its purchase of the property, no further tax is due. 4/23/93.

[295.0575](#) **Sale of Royalty Rights.** A taxpayer sold medical equipment for a stated amount plus a royalty based on the number of patients using the equipment during a 60 month period. The taxpayer reported sales tax on the sales price of the equipment and also on the royalties as they became due and payable. Subsequently, the taxpayer sold the rights to a substantial portion of the future royalties to a finance company.

The sale of the future rights to the royalties is a sale of an intangible asset and no sales tax applies to the amounts received on the sale. However, the taxpayer, not the finance company, would continue to owe sales tax on the royalty payments it receives as the amount becomes definite. 5/17/88.

[295.0580.](#) **Overtime Payments Charged to Vendee.** A seller of construction materials makes an additional charge for overtime payments paid to its employees because the purchaser requests a later delivery time than was originally scheduled. The tax applies to the total of the original sales price of the materials and the separately billed amount for the overtime payments. 9/22/66.

[295.0600](#) **Partial Reimbursement.** The total receipts from the sale of equipment located in a business area condemned for urban renewal are subject to the tax even though the equipment was sold for less than

its predetermined value when the urban renewal authorities reimbursed the taxpayer for the balance. 5/16/68.

**295.0620 Patent License.** The amount received for a patent license, sold with machinery and necessary to operate the purchased machinery, must be included in the measure of the tax. The right to use tangible personal property is part of the rights inherent in the general concept of property. Thus, the amount received for the patent license is attributable to the sale of the machinery and, as such, is taxable. 11/3/66.

**295.0622 Satellite Television Service.** A firm provides direct to home satellite services to end users. The customer receives the service through a satellite dish antenna, a set top receiver/decoder and a remote control which are purchased from retailers. Included with the set top receiver/decoder is an "access card" encoded with information to descramble the programming which is purchased. The signal for the programming will be sent by satellite.

The firm does not own or lease the satellite dish antenna, receiver/decoder or remote control. The equipment is the property of the consumer.

The firm's charges to its customers for the customers receiving the satellite signals which the firm transmits are not subject to tax. The firm's transmission of the signals to the customers does not result in the sale or purchase of tangible personal property. 7/7/94.

**295.0625 Photo Canvassing.** A photographic firm obtains orders for home portraits through canvassers. The photographs are taken by the firm's photographer. The proofs are returned to the canvassers who take them to the customers and attempt to obtain additional orders. When the canvassers obtain additional orders for prints, a down payment is made and the customers receive an invoice showing the total sales price, down payment and amount due. The prints are made up and mailed C.O.D. to the customers. Sometimes the customers refuse to accept the prints which are returned to the firm. In such cases, the firm does not return the down payment.

Under the circumstances, since the photographs have been made to the special order of the customers and the down payment was made, the sales were consummated. Therefore, the invoiced amounts are taxable gross receipts but the firm is entitled to a deduction for bad debts with respect to the unpaid balances. 11/10/65.

**295.0640 Sale of Computer with Proprietary Software.** The value allocated to computer programs contained in a personal computer which is sold is includable in the measure of tax. 7/16/93.

**295.0646 Sales of Gasoline and Car Washes.** The following explains the application of tax to situations involving the sales of gasoline and car washes.

- (1) A customer is given a "free" car wash provided a stipulated amount of gasoline is purchased.

The free car wash is considered a service that is part of the sale of gasoline. The gross receipts from the sale of gasoline should not be reduced. The car wash is seen as analogous to the washing of the windshields or pumping air into tires.

- (2) A customer is given a reduced charge for the car wash based on the number of gallons of gasoline purchased.

The reduced charge should be treated as a nontaxable charge for an optional service, similar to the Board's policy on optional warranty charges.

- (3) A customer is given a reduced price for the gasoline provided a car wash is purchased for a fixed price. The car wash price is the same whether or not the customer purchased gasoline.

Since the reduced charge of the gasoline is above cost and is posted on the pumps, the reduced price should be accepted as the selling price of the gasoline. To include the car wash price, or part of it, as receipts from gasoline sales would be to dictate the selling price to the dealer for sales tax purposes. The dealer should be free to stimulate car wash sales by reducing the price of the gasoline. 5/30/73.

**295.0647 Sale of Low Vision Aids and Training Packages.** A taxpayer dispenses low vision aids and provides training and rehabilitation services. The aid is a prosthetic device that enhances the vision of the legally blind. Each time a device is sold, the taxpayer also sells a training package on how to use the device. This training package is sold as a separate item and at an additional cost to the patient. The training is performed by both licensed and nonlicensed health care providers such as opticians, optometrists, clinical assistants, and occupational therapists.

If the customer must purchase the training package as a condition to the purchase and/or functional use of the device, then the training package is mandatory and a service that is part of the sale of tangible personal property. If so, the taxable gross receipts for the sale of the device would include the charge for the training package.

If the purchaser may purchase the device without also purchasing the training package, then the training is optional. If so, the application of the tax to the charges for the training depends on whether the training itself is a sale for tangible personal property, in whole or in part. If the training consists only of the providing of training material, the entire charge is taxable. If, however, the taxpayer performs significant training services and bills lump sum, then no tax applies to that lump-sum charge for training. The taxpayer would be the consumer of the classroom material it provides and tax would apply to the sale of these materials to the taxpayer. If, instead, the taxpayer makes a separate charge for the materials it provides to its customers as part of the training (such as video tapes, pamphlets and books), it would be the retailer of any such material and sales tax would apply to that separate charge. 10/18/96.

**295.0648 Sale of Microbes.** The gross receipts from the retail sale in this state of microbes that consume toxic hydrocarbon chains are taxable. The microbes are not a form of animal life which ordinarily constitute food for human consumption nor do they constitute feed for such forms of animal life. In addition, California does not have an exemption for products that aid in pollution control. 8/16/91.

**295.0650 Sales of Trailers.** A trucking company, engaged solely in the transportation of U.S. Mail, purchases forty trailers. The company has three contracts requiring the transportation of U.S. Mail from Los Angeles to Oakland and San Francisco. The trailers are built out-of-state and delivered in California. The trailers will be used from the Los Angeles and Oakland post offices.

Since the trailers are sold by a dealer in California, sales tax applies to the sale of these trailers. There is no exemption from the sales tax based on the use of these trailers for delivery of interstate mail under contracts with the U.S. Postal Service. 1/27/92.

**295.0660 Selling Price Below Cost—Further Explanation of Applicable Rules.** Manufacturers frequently purchase advertising material and sell it to their dealers at less than cost.

If the manufacturer gives away the advertising material, then, provided the gift takes place in the state, he is liable for use tax upon the purchase price of that material. If he makes but a nominal charge to his dealers for it, he is the consumer of it rather than the reseller thereof. Where there is in fact a substantial sales price then under the definition in the statute the property was purchased for resale and the tax applies only to the retail price.

If a fictitious retail price were charged solely to avoid tax, that price would be ignored as a sham. If, on the other hand, the transaction is bona fide, the tax is measured by the actual gross receipts from the retail sale of the tangible personal property. 5/21/51.

**295.0680 Selling Price Below Cost.** Even though advertising material is sold for less than its cost the difference between the cost and the selling price does not represent a taxable figure, unless the sole reason

for selling below cost is to avoid or minimize the tax, with the true selling price being in some manner concealed or paid through some indirect method. This assumes, of course, that the transaction is a bona fide business transaction not designed to set up a fictitious sales price. 4/9/51.

[295.0700](#) **Selling Price—Far Below Cost.** “X” is the consumer of the safety glasses which it purchases from a dispensing optician and furnishes to its employees to whom a charge is made of 15 percent of the cost of the glasses to “X”. 6/5/51.

295.0701 **Services that Are Part of the Sale.** A retailer sells instructional materials to instructors. It also sells a “developer’s pack” which includes the right to modify the materials for development of customized seminars. The gross receipts subject to tax include any amount charged for the right to teach or customize the materials. 11/28/90.

[295.0702](#) **Services Related to the Sale of Printed Matter.** When a firm sells printed matter, separately stated charges for word processing, folding and stapling of printed matter are services related to the sale of the printed matter.

A separately stated charge for composing a resume is not taxable when the purchaser of the printing is not required to contract with the printer for the composition service. 6/24/94.

[295.0702.500](#) **Singing Telegram.** A taxpayer sells and delivers balloons and party decorations. If a customer so requests, a singing telegram may be included with the delivery. A service charge is made which is not labeled as to whether it is for delivery prior to title transfer, which would be taxable, or for the performance of the singing telegram, which would be a nontaxable service. It becomes the burden of the taxpayer to provide evidence that the charge was for the nontaxable service of performing the singing telegram. 10/28/93.

[295.0703](#) **Software Licensing.** A company develops and publishes video games that are currently manufactured and distributed on floppy disks. The company may issue non-exclusive licensing agreements for their product to persons who could be granted the right to convert and modify the video games to be compatible with computer/interactive entertainment formats. The company would supply to the licensees object code masters for the licensed games and mechanical art or film for all components necessary to complete the licensed products. The licensee pays the company (licensor) royalties equal to a percentage of net sales for the sale and distribution of the licensed products.

Royalties paid for the right to reproduce or copy a program to which a federal copyright attaches are not subject to tax provided the purpose is to publish and distribute the program to third parties for consideration.

Charges for transfers of mechanical art and film in connection with such licensing agreements are subject to tax.

Charges for transferring the data from floppy disc to CD ROM are subject to tax.

Rentals of video games to consumers are subject to tax pursuant to section 6006(g)(7) and section 6010(e)(7). 9/2/92.

295.0705 **Software Prototypes.** A computer consulting business also creates custom software. It is contemplating a contract to develop and install a system in a foreign country for a foreign entity. A prototype will be fabricated and assembled in this state to serve as a model or a “test-bed” for the larger system which will be assembled and developed in the foreign country. The prototype will be used to perform such tasks as hardware and software integration and system problem correction. On completion of the contract, the prototype will be shipped to the customer. Title to the prototype will transfer to the customer upon delivery to the common carrier for shipment.

The prototype is clearly “tangible personal property” as defined in section 6016. The use of the prototype in this state to integrate hardware and software and to correct system problems is other than for demonstration and display for the purpose of resale. The sale to the computer consulting business of the materials and labor to fabricate or assemble the prototype is a taxable retail sale. The sale to the customer is a second retail sale, but that sale will be exempt from tax if meeting the requirements of subdivision (a)(3) of Regulation 1620. 5/3/93.

**295.0710 Standby Charges.** A “standby” charge made for standing by with a loaded vehicle after the goods have reached their destination is part of the charge for transportation. It is not includable in the taxable gross receipts from the sale of the goods under a contract calling for delivery at destination if made for standing by at the destination after having allowed the buyer a reasonable opportunity to take possession. Under those circumstances a tender has been made and the sale has occurred before the charge for standing by is incurred. In the absence of evidence to the contrary, it will be presumed that charges designated as “standby” charges are in this class. 11/26/74.

**295.0711 Start-Up Cost—Sale of Equipment.** A taxpayer designs and manufactures equipment used in the treatment of wastewater for municipalities and other industrial applications. The taxpayer sells the equipment to the customer but is not involved in the installation of the equipment at the job site. It does, however, have a subcontractor that goes to the jobsite when the equipment is ready to begin operation and assists in the “start-up” of the equipment. The equipment is shipped to the jobsite via common carrier. The equipment is bid and invoiced as a lump-sum price. There are no separate line items on the invoice for start-up cost, freight cost, or materials.

Since the taxpayer requires the purchaser of the equipment to purchase the start-up services as a condition of purchase and/or for the functional use of the equipment, then that start-up service is a service that is part of a sale and the charge for it is subject to tax. No deduction from the taxable gross receipts is allowed on any freight costs to taxpayer since charges for transportation from the taxpayer’s place of business or other point from which shipment is made directly to the purchaser are not separately stated on the invoice to the customer. 10/17/96.

**295.0713 Storage Charges.** All services performed prior to the delivery and passage of title to the property sold is includable in gross receipts. Therefore, storage charges are subject to tax. 3/15/91.

**295.0720 Suit Clubs.** A merchant organizes a suit club for a fraternal organization whose members will pay a specified amount each week for fifty weeks, at which time the merchant will provide the member a suit. In addition, each week the name of a member is drawn. The winner obtains a suit and may at that time cease his weekly payments. Alternatively, the member can continue to make his weekly payments and he will receive a second suit. The fraternal organization receives a percentage of the receipts and the balance is paid to the merchant.

The merchant is making taxable retail sales of all suits, including those furnished to the weekly winner. A seller may not deduct from the measure of sales tax the costs of salesmen’s commissions. Here, however, the merchant is not paying the fraternal organization a commission. Rather, its members are making a contribution to their organization as part of the suit club. Only the amounts actually paid to the merchant are subject to tax. 4/18/52.

**295.0721 Telephone Conferencing Equipment.** A firm has conferencing equipment located outside of California. Some courts in California require lawyers to appear telephonically. As a result, the firm has installed equipment for use by the judge in California in order that the judge may better hear and communicate with all participants without holding a phone receiver. Assuming there is no charge to the courts for the equipment installed in courtrooms, there is no taxable sale by the firm. However, it appears that the firm has use tax liability with respect to such equipment. There is no fee to the court. Rather, the only fee is charged to the lawyers. The charge to the lawyers is not taxable since there is no sale of tangible personal property. 5/16/97.

**295.0722 Telephone Inquiry and Telecommunications Services.** As part of a taxpayer's subscription price for a taxable publication, a subscriber is provided with a toll-free telephone number with which the customer can obtain more specific information about carrier services covered in the publication. This toll-free number is operated by a third party. In addition, the taxpayer and the third party provide a different telecommunication service which is sold independent of subscription to the publication. A subscriber to the service could, by telephone, acquire access information regarding U.S. postal rates as well as overnight courier services, rates, etc.

Since the telephone service is provided as a part of the taxable sales of the publication and the subscriber does not have the option to acquire the publication without the telephone service, tax applies to charges allocable to the telephone service included in the subscription price. However, since the telecommunications service may be purchased without subscribing to the publication, sales of the service are not subject to tax. 9/14/87.

**295.0725 Television Filming Sets.** A taxpayer is engaged in designing, constructing and selling or renting scenery used in filming television commercials. The taxpayer assembles the sets at its own facilities so that approval can be obtained from its customers prior to filming. After approval, the set is disassembled, transported to the studio and reassembled. Separate charges are made for setup, stand by during filming, disassembly, transportation, and art direction.

If the standby and disassembly are optional, the charges are not subject to tax. If the reassembly is optional, and title or possession are passed to the customer prior to reassembly, tax does not apply to the charges.

Art direction involves a person who ensures the set looks good on film and decides what props are needed. This person also is responsible for watching the monitor during filming and making changes that may be needed. The portion of the charge that relates to the designing and construction of the sets is a service that is part of the sale and subject to tax. The portion related to work done during the filming is a service related to the filming and is nontaxable, if such charges are optional. 10/7/94.

**295.0728 Tooling Evaluation.** A manufacturer manufactures molds which it uses to produce wheels for automobiles. The molds are sold prior to production of the wheels. The molds are evaluated before and during production. The question is whether the charges for these evaluations are services that are a part of the sale of the mold, which is subject to tax, or related to the wheels which are sold for resale.

In this instance, these charges for evaluation are services that are part of the sale of the wheels and therefore are sales for resale. The conclusion is based on the following: the engineering specifications which have been submitted outline a comprehensive wheel testing program from pre-production through production. The goal is repeatedly described as providing an evaluation of "design intent" of the wheel. If any requirements of the tests are not met, the result could be changes in tool design, or changes in material composition, or changes in manufacturing process. Thus, the mold is incidentally being tested along with the manufacturing process and the material composition, but the ultimate goal of the testing is to validate the wheel. This conclusion is supported by the fact that the wheel validation test are not performed for all customers who purchase wheels even though the tooling for each is the same. This fact indicates that the validation tests are not required for the tooling itself. 8/5/93.

**295.0730 Training Customer's Staff.** As a part of the "installation charge," taxpayer spends two-thirds of the time charged for "installation" on training the staff of the customer in operating and maintaining the new machinery.

Charges for such training which are separately identifiable and optional to the customer may be excluded from the measure of tax. On the other hand, if the training is practically or contractually mandatory, then the charges applicable to the training may not be excluded from the gross receipts of the machinery. 10/4/76.

**295.0737 Transfer of Peptides—Collaboration Agreement.** Taxpayer, a biotechnology company engaged in the research and development of peptides, entered into a collaboration agreement with another

biotechnology company to develop new marketable products. Under the terms of the agreement, the taxpayer receives the right to use the company's existing products in taxpayer's research and development process. The company's technology is transferred to the taxpayer in tangible form (i.e., peptide libraries in vials) along with a written synopsis of each peptide's chemical structure. The company retains the ownership rights to the peptides and the taxpayer's use is restricted solely to research and development activities. Due to the physical characteristics of the technology, the peptides are destroyed during the taxpayer's activities.

For each peptide library provided for screening, the taxpayer pays the company a fixed amount for each library delivered. If the taxpayer's research efforts result in a "marketable" product, the collaboration agreement requires milestone payments and royalties. The nature of the product governs which party must pay the milestone and royalty amounts. If it is a therapeutic product, the taxpayer must pay the company; however, if a diagnostic product is developed, the company must pay the taxpayer.

In this case, the company is receiving consideration in the form of cash based on the transfer of peptide libraries. The transfer is not a lease since the libraries are destroyed in the course of the taxpayer's research and are not returned to the company. The fact that the agreement characterizes the transfer of the libraries as a "license" does not alter the treatment of the transfer under the Sales and Use Tax Law since possession of the libraries is not returned to the company. The remaining issue is what are the gross receipts from the company's sale of the libraries to the taxpayer.

Under the agreement, the taxpayer pays the company amounts for the libraries furnished to the taxpayer for screening. However, the taxpayer does not always make royalty payments to the company. Rather, where a "marketable" product is identified, the company may pay the taxpayer milestone and royalty fees, or the taxpayer may pay the company milestone and royalty fees, depending on whether the marketable product is therapeutic or diagnostic. Under the specific facts of this contract, the milestone and royalty payments are not regarded as to be from the company's sale of its peptide libraries. Thus, tax applies only to the company's charges for the sale of its peptide libraries. 5/10/95.

[295.0740](#) **“Undercoating.”** Taxable gross receipts from sale of automobile includes charge for undercoating prior to sale even though charge is separately stated. Persons undercoating used cars for owners are consumers of materials used. 5/15/50.

[295.0743](#) **Unlock Code Fee.** A taxpayer sells CD-ROM disks which embody software programs. The purchaser of the disk has access only to certain programs on the disk, but may examine demonstrations of other software on the disk. The taxpayer has an "800" telephone number which the purchaser may call and pay a fee to obtain an unlock code for access to other programs on the disk.

The transfer of the disk is considered a sale of tangible personal property. The payment of a fee to obtain access to a portion of the disk is a further payment for use of the disk. Tax applies to the charge for the unlock code. 5/2/95.

[295.0747](#) **Use Tax Is Due on Agreed Sales Price.** An individual sold a vessel to a purchaser, as agent for a corporation, for an agreed sales price of \$60,000. The purchaser seeks to reduce the agreed sales price as the measure of tax on the basis of allegations of fraud set forth in current litigation with the seller.

Once a sales price is agreed upon and a transaction completed based thereon, a dispute thereafter between seller and purchaser as to the price does not have any bearing on the use of the agreed price in computing the use tax, *Southern California Edison Co. v. State Board of Equalization* 7C 3d 652 (1972). The court stated, "An overall view of the sales and use tax statutory scheme, however, indicates that the Legislature intended the sales price and gross receipts terminology of sections 6011 and 6012 to refer to the **price agreed upon at the initial sales transaction** and not to the net amount which the buyer ultimately pays for the goods purchased." (emphasis is that of the court). Even if subsequently there is a settlement or adjudication concerning the vessel, it would not have the effect of reducing the initial agreed sales price on which the tax was predicated. 9/8/75.

295.0750 **Video of Wedding.** A chapel, performing private ceremonies, sells video tapes of the wedding ceremonies. Although a “sale”, for purposes of the Sales and Use Tax Law, does not include any transfer of a “qualified motion picture” under certain circumstances, the term “qualified motion picture,” does not include motion pictures produced for private noncommercial use, per section 6010.6(b)(3).

Accordingly, the sale of a video tape of a wedding, which is for private noncommercial use is subject to sales tax. 8/11/93.

295.0752 **Videotape.** A person created a visual impact study concerning a proposed construction site. The final product transferred to the client consisted of still photographs and a videotape which the client will use for various presentations concerning the project.

The gross receipts from the sale of photographs and artwork are subject to sales tax. The videotape that was prepared is a “qualified motion picture”. The portion of the charge that represents the charge for the qualified motion picture is not subject to sales tax. 11/17/91.

[295.0753](#) **Video Tape Duplication.** Charges for making video tape duplications of the master tape for distribution are subject to tax. 5/29/97.

[295.0754](#) **Wedding Functions.** A wedding consultant/planner makes all of the arrangements necessary for a wedding. The consultant’s charges and the corresponding tax application are set forth below:

(a) Wedding cakes. Charges by a caterer for the issuing of food provided by others are subject to tax under Regulation 1603(h). Therefore, charges for providing the wedding cake and the charges for the cutting and serving of cake are subject to tax.

(b) Accommodations. When the accommodation charges relate to sales to tangible personal property, they are subject to tax. Thus, charges for accommodation of staff who will serve meals must be included in the measure of tax for sales of those meals.

(c) Musicians/entertainers. Assuming these performers are not used in connection with the sale of any tangible personal property nor are they used in connection with the service of food, amounts paid for these performers are not subject to tax.

(d) Set-up/tear-down labor. If these amounts are connected to the sale of the tangible personal property or the service of the meals, charges for set-up and tear-down are included in the measure of tax. 3/22/94.

[295.0755](#) **Wine Tasting and Seminars.** A retailer of wine presents a series of educational wine tastings and seminars. The retailer charges the participants a fee for the seminar. After a lecture, the retailer provides wines to the participants to taste. The retailer purchases the wines under resale certificates. Tax is due on a percentage of the total price charged for the seminar based on the value of the wines tasted in each seminar. 12/6/79.

295.0757 **Canceled Contract.** A taxpayer designs and manufactures property to the special order of its customers. If a customer cancels the contract prior to completion, a fee is charged to compensate the taxpayer for the work performed. If no tangible personal property is transferred and there is no fabrication of customer furnished property, there is no sale, and the fee is not part of taxable gross receipts. 8/16/90.

295.0758 **Shortage in Delivery.** A retailer contracted to sell a set amount of fuel for a certain price, and although less fuel was delivered, the full price was charged to the airline. The effect of this was to increase the selling price of the fuel which was actually delivered. Therefore, tax applies to the full selling price charged. 2/21/85.

(b) ASSUMPTION OR CANCELLATION OF INDEBTEDNESS

**295.0760 Balance on Conditional Sales Contract.** When a person who is a “seller” and who is purchasing equipment under a conditional sale contract exchanges the equipment for an interest in a house, sales tax applies to the receipts from the sale and the receipts consist of the value of the interest in the house plus the assumption by the buyer of the balance owing on the conditional sales contract. 5/7/54.

**295.0765 Cancellation of Contract Prior to Deliveries.** A taxpayer contracts to fabricate and sell tangible personal property to a customer. At the completion of the fabrication it is found that the property is not usable for the purpose for which it was intended. The contract is canceled, but the customer reimburses the taxpayer for labor costs incurred in the fabrication. Since no tangible property was transferred, there was no sale and there is no tax unless the contract provided for transfer of title to the customer prior to delivery. The taxpayer is regarded as the consumer of all property used on the contract. 12/29/93.

**295.0770 Formal Title Transfer.** A husband and wife transferred realty in exchange for a trust deed and a motor home. The equity in the motor home was applied to the purchase price of the realty and the couple agreed to assume the loan on the motor home. After the close of escrow on the transaction, the couple failed to re-register the motor home in their own names or to formally assume the loan balance, although they did make loan payments as scheduled. The registered owner of the motor home attempted to persuade the couple to re-register the vehicle and to formally assume the loan, but they refused to take either action. Finally, to settle the dispute, the couple returned the vehicle to the registered owner and agreed to waive reimbursement for the loan payments which they had made. The registered owner also agreed to be responsible for the loan.

The transaction is viewed as a sale despite the absence of a formal change of title. The amount subject to tax is the sum of the loan assumed plus the equity allowed as part of the purchase price of the realty. A formal assumption of the loan is not necessary to establish an assumption of the debt. The acknowledgment of the debt by the purchaser through the payments and notation on the checks is sufficient in this circumstance. The return of the vehicle to the registered owner is regarded as a rescission which is not subject to tax. 4/20/94.

**295.0775 Membership Fees.** A taxpayer operates a discount membership store which offers two types of memberships, business (\$25 per year) and individual (\$30 per year). Each member pays the posted price for each product with no discount or surcharge. Nonmembers can not make purchases. The taxpayer is beginning a “90-day free pass” promotional program to obtain more members. Many selected individuals are offered a “90-day free pass” which allows them 90 days to shop and purchase goods at a price which is five percent above the posted price. When those individuals come to the store, they are given a choice of immediately becoming a member (which some do), or obtaining the free pass. Once the 90 days expires, the pass holder has the choice of becoming a regular member or being excluded from the store. The promotional program only covers a specific time period.

During the period of time this 90-day free pass program is being offered at the stores, the portion of the taxpayer’s total membership fees related to taxable sales is subject to sales tax as it is considered derived from the retail sale of tangible personal property. Membership fees are part of taxable gross receipts when a person who pays a fee is entitled to purchase merchandise for a lower price than a person who does not pay a fee. (Regulation 1584.) 6/6/94.

**295.0780 Notes—Indebtedness on.** Where a taxpayer transfers personal property to another and the transferee assumes the indebtedness on such property and also cancels taxpayer’s indebtedness to him on certain notes, both the assumption of indebtedness and the cancellation of taxpayer’s notes constitute “gross receipts” and the measure of the tax on the transaction. 12/30/54.

**295.0800 Insolvent Debtor.** Where property of an insolvent debtor is sold by an assignee or receiver and the purchaser either assumes the existing balance on a conditional sales contract, or purchases it “subject to” such unpaid balance, the balance due is a part of the consideration for the sale of the property and is subject to sales tax. 6/22/55.

[295.0820](#) **Liabilities.** In a sale of a business whereby the purchaser assumes outstanding obligations of the seller, such obligations constitute a part of the taxable gross receipts. In such a transaction no set off of unpaid open accounts is allowable. 11/24/53.

(c) DISCOUNTS

*Trading stamps as, see also Trading Stamps and Related Promotional Plans.*

[295.0860](#) **Bank Credit Plans.** Retailer honoring a bank's credit cards may not deduct from gross receipts the 3% to 6% charge made by a bank for its service. The service charge is not a cash discount because it is an amount allowed someone other than the purchaser. 5/15/59.

[295.0880](#) **Billing and Collecting Charges.** The customer is the party who must receive the benefit of the discount in order for the retailer to exclude it from his gross receipts. Compensation paid by a restaurant to certain organizations for their services in billing and collecting from their members is not a cash discount. 1/31/58.

[295.0888](#) **Cash Discounts.** A retailer offers cash discounts for prompt payment. If a customer makes prompt payment and takes the discount, the retailer's gross receipts are the amount billed less the discount. If a customer does not make prompt payment, the retailer's gross receipts are the amount billed. The statute excludes only discounts allowed and taken. 5/13/94.

295.0900 **Cash Prizes.** Punchcards were purchased by a grocery store, which distributed them to customers and nonpurchasing visitors. Cards could be redeemed by customers after making \$100 of purchases, as indicated by punches on the cards or cards could be redeemed by nonpurchasing visitors by accumulating weekly "free" punches. Upon redemption each customer or visitor received a cash prize of \$1 to \$100, the amount designated under a seal on each card, which was opened by a store employee. The store was the consumer of the punchcards. The amounts of such cash prizes were not cash discounts, inasmuch as receipt of such amounts did not necessarily depend on the recipient having made any purchases and the amounts received bore no relation to the amount of purchases actually made by a customer recipient. 9/21/64.

[295.0920](#) **Christmas Club Plan,** allowing discount on December purchases based on percentage of purchases throughout rest of year, treated as deductible trade discount. 11/14/50.

[295.0925](#) **Club Membership Fee.** A clothing company sells a club membership to customers for \$20. The membership fee entitles the customer to a 20% discount on all purchases.

The \$20 membership fee is related to anticipated retail sales and; therefore, the amount is includable in the gross receipts of the clothing company's sales of tangible personal property (Revenue and Taxation Code 6012). 3/1/90.

295.0940.175 **Credits Given to Purchaser of Sample Merchandise.** A distributor of advertising specialties, i.e., pens, ashtrays, calendars, coffee mugs, etc., purchases sample merchandise from the suppliers of the merchandise. The sample merchandise is shown by the distributor to potential customers. The suppliers bill the distributor for the sample merchandise but the amounts billed are reduced by subsequent credits. If samples were not billed and if suppliers were to offer unlimited free samples and catalogs, there would be substantial and almost uncontrollable waste of resources. The basis for the credits from the suppliers are not uniform. Some of the bases from which the credit is determined are as follows:

- (1) Based on prior year's purchases.
- (2) A memo billing is sent with the samples. These are totaled at the end of the year and credited out in whole or in part in accordance with purchases made (other than samples) during the current year.
- (3) Bill and collect for samples as they are shipped and a check or credit is issued at the beginning of the following year in accordance with established policies.

The above credit or rebate is not an adjustment of the sales price of the samples but rather is consideration applied to pay for them. section 6011 expressly provides that the "sales price" includes any "amount for which credit is given to the purchaser by the seller." The rebate is a credit given to the distributor, purchaser, by the suppliers, sellers, in consideration of its making a certain volume of purchases of resale merchandise. While the credit may, by reason of the agreement, be limited to the value of the samples, this does not preclude its classification as consideration received for making the volume purchases. Absent a specific volume of purchases, the credit would not have accrued and the price of the samples would necessarily have been required to be satisfied from other sources. 10/28/85.

**295.0941 Discount Coupons.** A taxpayer, who is in the restaurant business, sells coupon booklets for \$1.00 each which contain multiple discount coupons entitling the purchaser to various discounts on meals sold by the taxpayer.

The sales of the coupon books by the taxpayer are regarded as sales of nontaxable rights to discounts on its meals. The actual coupons are a record of the rights to receive the discounts and do not constitute a sale of tangible personal property at the time the coupon books are sold. However, when a coupon is presented by a customer, it is regarded like that of a manufacturer's coupon since the taxpayer will have received compensation from the customer via the amount previously paid by that customer for the coupon. This means that the taxpayer's gross receipts from the sale of a meal to customers presenting a coupon will consist of any amounts received from the customer for the meal plus an amount representing a pro rata share of the \$1.00 coupon allocated to the coupon used by that customer. This pro rata share equals the \$1.00 coupon booklet allocated to the coupon booklet divided by the number of coupons in that booklet that the retailer, in good faith, believes a customer might redeem toward the purchase of meals. Thus, if a coupon booklet contains ten coupons, an additional \$.10 should be allocated to the gross receipts from the taxpayer's sale of taxable food products to a customer presenting a discount coupon. Tax does not apply on the pro rata share allocated to coupons that are not redeemed for discounted meals since the taxpayer is not regarded as having received additional compensation from the customer as part of the sale of taxable food products as a discount rate. 3/13/96.

**295.0942 Discounts Based on Prior Purchases.** A taxpayer gives price discounts to customers based upon the amount of prior purchases. The discounts are regarded as trade discounts and are not included in the amount subject to tax. 12/3/93.

**295.0944 Employee Discounts.** Employees of a corporation that operates a retail store receive a 25 percent discount in the store at the time of sale. The employees then mail the sales receipts to corporate headquarters for an additional discount which represents the difference between the amount paid and the corporation's cost of the merchandise plus a small mark-up. The additional discount is sent to the employees in the form of a check. The amount of the discount is not a rebate or amount based on sales by the employee to third parties. Rather, it is a discount in the sales price of specific property given by the seller to the purchasing employee. The additional discount is not part of taxable gross receipts. If tax reimbursement has been charged on the additional discount, it constitutes excess tax reimbursement. 9/25/95.

**295.0945 Exchange of Foreign Currency to U.S. Dollars.** A taxpayer lost money due to the devaluation of the Mexican currency. To determine the proper amount of gross receipts, the foreign currency has to be converted, by rate of exchange, to U.S. Dollars. In regard to normal over the counter sales, the rate of exchange at the time of sale is controlling. For sales and use tax purposes, the gross receipts must be measured by U.S. Dollars. When foreign currency is accepted, it must be presumed that the currency was accepted at the rate of exchange in effect at the time of the sale. 3/8/77.

**295.0946 Financing Transaction.** Company A entered into an agreement with Company B to purchase a mainframe computer for a cash price of \$4,895,800. The agreement indicated a \$100,000 reduction in the cash price (labeled "credit") on the first installment payment if A used B's financing plan. The installment payment agreement shows a finance charge of \$238,432.64 computed on the \$4,895,800 cash price at an annual percentage rate of 10.52%. Company A requested an opinion regarding the sales tax consequences.

The \$100,000 is not the type of credit referred to in section 6012 as part of the taxable measure since A would not receive additional consideration of \$100,000 from B over and above the sales price for the computer. Instead, A would deduct the amount due on the first installment payment by \$100,000.

However, not all of the \$100,000 would constitute a nontaxable discount allowance. A portion of the \$100,000 must be allocated to a reduction in the finance charges. The allocation is the difference between the finance charge on the \$4,895,800 and the amount of finance charges computed based on the stated interest rate of 10.52% computed on the discounted price. 9/27/89.

**295.0948 Manufacturer's Rebate vs. Dealer's Incentive or Allowance.** The manufacturer's rebate is an inducement to the consumer to purchase and is a credit available to be taken as cash or to be applied against the selling price of the vehicle. The consumer may assign the credit to the dealer. Under section 6012, the measure of the sales tax includes any amount for which credit is allowed by the dealer. The dealer collects the amount of the rebate from the manufacturer pursuant to the assignment made to the dealer by the consumer. The consumer rebate may be identified as an additional down payment or may be subtracted directly from the cash price of the vehicle. In both cases, the amount of the rebate is fully subject to tax.

As distinguished from a consumer's rebate, the manufacturer may make incentives or allowances directly to the dealers. These are inducements to the dealer to sell and are payable in the form of discounts on the cost of the vehicle to the dealer. The allowance may be a year-end close-out allowance based on unsold units. The assistance may take the form of incentive price assistance to enable the dealer to bid against competitors. The manufacturer may offer government price concessions or fleet incentives. In all of these cases the incentive or allowance is an inducement to the dealer and results in a reduction of the cost of the vehicle to the dealer. That is, there is a price adjustment between the manufacturer and a dealer as to the wholesale price of the vehicle. The actual amount of factory incentives or allowances or holdbacks may not be disclosed to consumers. In some cases, such incentives or allowances may be passed on dollar-for-dollar to the consumer and may be disclosed to the consumer whether there is intentional disclosure or not. The incentive results in a reduction in the taxable retail selling price of the vehicle, and the measure of sales tax is thus reduced. 2/24/89.

**295.0950 Merchandise Redeemed with Frequent Buyer Dollars.** A customer can earn credits called "frequent buyer dollars" by buying a manufacturer's product from retailers. The earned credit can be applied towards the purchase of certain slow moving merchandise produced by the manufacturer. The designated merchandise is sold to the retailer at a much reduced price. The retailer sells the item to the customer for a specific cash price if the customer redeems a certain number of frequent buyer dollars.

Upon redemption, the frequent buyer dollars are considered to be a trade discount and should not be included in the measure of tax. 12/11/91.

**295.0960 Patronage Dividends Given by Retailer Cooperative.** A retailing cooperative, formed as a non-profit corporation under the California Corporations Code, gives rebates to its members semiannually, based on the total amount of their purchase from the cooperative. The rebates, made pursuant to section 12805 of the Corporations Code, are patronage dividends, not cash discounts, and are not deductible from the taxable gross receipts of the cooperative. 10/15/65.

**295.0965 Price Adjustments.** An "Enterprise Agreement" provides for price reductions or credits for meeting and/or exceeding a dollar amount of purchases for a specific period of time. However, failure to meet the incentives will result in an upward adjustment.

There appears to be essentially three possible outcomes: (1) Company A achieves the revenue commitment and applies the amount (described as a credit) as a volume discount to reduce the purchase price on future purchases; (2) Company A again achieves the volume commitment but takes the amount as a credit to reduce outstanding accounts receivable, accumulated pursuant to purchases made under the contract; and (3) Company A fails to meet revenue commitments and owes Company B the difference between the actual revenue attainment and the agreed upon revenue commitment.

An amount deducted from the initial computation to reach the agreed price is not part of the taxable measure because there was never an obligation to pay that amount. Company A may use its volume discount to reduce the purchase price of future purchases from Company B. The amount of the reduction that was based on taxable purchases of tangible personal property is not included in the measure of tax. Price adjustments may be excluded from taxable gross receipts if they are part of a single integrated agreement that contemplates price adjustments. The price adjustment can be taken if the customer is actually given a refund in cash or discount in an amount equal to the agreed upon adjustment.

Assuming Company A's volume discounts are part of a single integrated agreement, the amounts taken to reduce outstanding accounts receivable accumulated from purchases made under the contract are not included in the measure of tax to the extent that the amount of the reduction was acquired from taxable purchases of tangible personal property. However, any upward adjustment charges paid by Company A to Company B must be used in the calculation of the measure of tax. When Company A pays Company B such adjustment charges, these payments increase Company B's gross receipts and must be included in the measure of tax. 10/4/93.

**295.0975 Real Estate Listing Fees.** Listing fees charged to an association of realtors by a publisher of a real estate listing publication are included in the gross receipts of the publisher from the sale of the publication to the association. Even though these fees are used to reduce the cost of the publication and, therefore, reduces its sales price, the fees are included in gross receipts pursuant to section 6012(b)(3), which provides that gross receipts include any amount for which credit is given to the purchaser by the seller. These fees are exempt from tax if the publication qualifies as a periodical under section 6362.7. 10/11/83.

(Note: Subsequent statutory change relative to periodical exemption.)

**295.0980 Rebate Not a Cash Discount.** A retailer may not exclude from gross receipts an amount paid to a school as a rebate on purchases made by its students. A cash discount is excludible from gross receipts only when given to the purchaser. 4/15/58.

**295.1000 Rebates.** A refund to nonprofit groups based on a percentage of purchases made by the groups' members may not be treated as a cash discount. Such a refund must be considered as an expense of doing business rather than a reduction of gross receipts. The sales tax must be based on the total amount charged to the purchaser. 11/20/64.

**295.1005 Register Receipt Program.** A university book store conducted a "Spring Bonus Program" in which specially colored register receipts were given for each sale during the term of the program. At the conclusion of the program, refunds at a predetermined rate were given based on the total sales value, including sales tax reimbursement, represented by tapes turned in by the patrons. The refunds given were classified as cash discounts rather than patronage dividends because the offer was available to all customers, not just students. In addition, the advertised terms of the program resulted in a "discount certain," not a discount based on chance or favored status. 12/31/79.

**295.1012 Software Licenses.** When the taxpayer allows customers who lease canned software a 50% credit of the lease payments toward the purchase price of the product, the measure of tax is the actual sales price of the property. In this case, the sales price is the amount after the 50% credit for the previously paid lease payments is subtracted from the purchase price of the software. 6/2/89.

#### **(d) CONSIDERATION OTHER THAN MONEY**

**295.1040 Contest Points.** If employee contest points are redeemable in merchandise, transfers of merchandise to employees constitute sales and are taxable. If an option exists under which points can alternatively be redeemed in cash, no sales tax applies if such option is exercised. 9/8/69.

[295.1045](#) **Coupons.** Amounts paid by a manufacturer to a retailer for redeeming coupons good for a free oil filter with the purchase of an oil change from the retailer are included in the retailer's gross receipts. The retailer may, by contract, charge the customer sales tax reimbursement on the amount paid by the factory. (See also Annotation 295.0430.) 3/11/93.

**295.1050 Equipment Exchange.** A firm manufactures and sells fault tolerant large mainframe computer systems and fairly large minicomputer systems. The firm also helps its customers relocate their data centers. The firm is considering offering an option whereby the firm would place its reconditioned equipment at the new location. Once the system at the new location is functional and the application programs have been transferred, the customer's equipment at the old location would be removed and returned to the manufacturer. The equipment swapped would be unit-for-unit, of equivalent condition.

The transaction would result in the manufacturer making a retail sale of equipment to the customer with the manufacturer taking the customer's equipment as a trade-in. The gross receipts of the sale include the fair market value of the equipment traded in and any other consideration paid by the customer for the swap. Charges for labor for services used in installing the equipment sold would be excluded from the measure of tax. 2/18/93.

[295.1070](#) **Gift Certificates Used as Prizes.** Where a golf club holds tournaments and the entry fee includes a charge for a meal at the club restaurant and the tournament prizes consist of gift certificates usable at the club pro shop, the normal retail price of the meal must be included in the taxable gross receipts of the restaurant since there is a sale of tangible personal property included in the entry fee. The gift certificates are considered to be the same as cash and when they are used at the pro shop, the retail selling price of the goods must be included in the taxable gross receipts of the pro shop. 5/26/76.

[295.1073](#) **Hostess—Free Goods.** A retailer furnishes merchandise free of charge to hostesses who market the retailer's merchandise by holding hostess parties. The value of the "free" merchandise is based on the value of merchandise paid for and shipped as the result of the hostess' party. The definition of gross receipts under section 6012(a) includes "the total amount of the sale . . . whether received in money or otherwise . . ." Here, the retailer receives the sales price for the "free merchandise" not in money, but rather in services performed by the hostesses. The measure of tax is the value of these services performed in exchange for goods. Absent any express agreement to the contrary between the retailer and the hostess, the value of the services is equivalent to the retail value of the goods received. 12/11/90.

[295.1080](#) **Merchandise Exchanged for Radio Time—Trade Agreements.** Where merchandise is sold to a California broadcasting station in exchange for radio time the stated value of the air time will be the measure of tax unless the agreement (either written contracts or invoices) also states the fair market value of the merchandise. 11/22/78.

[295.1100](#) **Real Property.** In the trading of a business for which a seller's permit is required for a home of approximately the same value, the sales tax applies to the selling price of the tangible personal property involved, which will be consumed rather than resold by the party acquiring the business, irrespective of the fact that the consideration received thereof is real estate. 7/17/53.

[295.1120](#) **"Swap Shop."** The retailer's gross receipts from his exchange would be the fair market value of the property received by him. If the parties fix a value in the course of their bargaining, then such price will be deemed the sales price for sales tax purposes, except that any figure which was not arrived at in good faith but rather for the purpose of evading sales tax would not be acceptable. If the parties mention no cash value in the course of their bargaining, then the retailer must make the best estimate possible of the fair market value of the property received. 3/12/52.

(e) TAXES AND FEES (GOVERNMENTAL)

[295.1140](#) **Bird Band Fees.** Manufacturers of bird bands are required by law to collect a fee from the purchaser on each band sold and to pay the fees collected to the Department of Public Health. The fee

collected may be excluded from the measure of the gross receipts if it is separately stated on the invoices or other form of billing so that the fee is not collected as a part of the price of the band. 8/5/68.

[295.1160](#) **California Pest Tax.** The California Pest Tax is imposed on the manufacturer. It is not excludable from the measure of sales and use tax. 6/6/94.

[295.1180](#) **Cigarette Tax.** The sales tax, both state and local, applies to the entire sales price of cigarettes including the amount of the cigarette tax included therein; the cigarette tax is imposed upon the distributor of cigarettes and is part of the price of the consumer. 8/10/60.

[295.1187](#) **City Tax Deduction.** A retailer is located in a city facility. As a condition of its lease with the city, it pays a city tax based on three percent of its gross receipts.

Such a tax is part of taxable gross receipts and is subject to the sales tax. The payment may not be deducted in computing tax liability. Only local taxes imposed by a city and a county pursuant to section 7200 et. seq. are excluded from gross receipts (section 6012(c)(6)), while all other locally imposed taxes are included. 12/13/95.

[295.1200](#) **Crude Oil and Chemicals.** The tax imposed by section 4611 of the Internal Revenue Code on crude oil received at a United States refinery and petroleum products entered into the United States for consumption, use, or warehousing is includable in the gross receipts of a retailer selling such products. Similarly, the tax imposed by section 4661 of the Internal Revenue Code on listed chemicals is includable in the gross receipts of a retailer making retail sales of such products. 4/22/81.

[295.1230](#) **Customs Duty.** A construction contractor-retailer of fixtures is not allowed to deduct U.S. customs duty on imported fixtures from the measure of tax on such fixtures. Sections 6011 and 6012 exclude taxes imposed by the U.S. from the measure of tax, except for manufacturers' or importers' excise tax. An importer's excise tax includes and means customs and excise duties imposed on importation. Customs duty paid on fixtures may not be excluded from the selling price to measure the tax on a contractor's retail sale of fixtures under Regulation 1521. 2/11/70.

[295.1237](#) **E-Waste Recycling Fee.** Revenue and Taxation Code section 6012(a)(2) provides that taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials used, labor or service cost, or any other expense of the retailer passed on to the customer.

The e-waste recycling fee is imposed on the purchasers of covered electronic devices, not on the retailers who sell these items. When retailers separately state the e-waste recycling fee on the receipts they issue to their customers, the retailers are not passing on expenses to the purchaser but are instead collecting the fee from the purchaser as required by statute. Therefore, the e-waste recycling fee is not included in gross receipts. 2/24/05. (2006-1).

[295.1240](#) **Erroneous Charges for Inapplicable City Sales Tax.** Erroneous charges for inapplicable city sales tax are taxable gross receipts in that such tax was not actually imposed by the city with respect to such sales. 10/15/51.

[295.1241](#) **Federal Diesel Fuel Tax.** The 2.5 cents a gallon federal diesel fuel tax imposed by the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) is an excise tax and is included in the definition of "gross receipts." It is not one of the excise taxes to which refund allowances specified in the Internal Revenue Code may apply. Accordingly, the excise tax will always be included in the measure of tax of retail fuel sales on which the tax is imposed. 2/13/91.

[295.1242](#) **Governmental Compliance Fee.** A nongovernment business makes a \$3.00 charge as a governmental compliance fee. The fee is intended to recoup a portion of the fees that the business incurs in complying with any and all government regulations.

The cost of complying with government regulations is a cost of doing business. The \$3.00 fee is a part of taxable gross receipts whether or not it is separately stated. 5/18/95.

**295.1243 Gun Dealer's Fee.** The fee imposed by the Department of Justice for processing Dealer's Record of Sale of Revolver or Pistol (DROS) forms in accordance with section 12076 of the Penal Code is imposed directly on firearms dealers. There is no statutory requirement that the dealers pass on the fee to the gun purchasers, however, a dealer may choose to pass on the fee to the purchaser. If the fee is passed on, it is includable in the firearms dealers' taxable gross receipts. 8/30/82. (Am. 99-2).

(Note: On and after January 1, 1999, the fee imposed by the Department of Justice is imposed directly on the purchaser and, thus, is not included in the measure of tax.)

**295.1245 Highway Revenue Act of 1982.** This Act, which is Title V of the Surface Transportation Assistance Act of 1982, amends or adds provisions to Title 26 United States Code (Internal Revenue Code of 1954) relating to fuel and other highway taxes. For sales and use tax purposes, the Act does not affect our present method of taxing sales of fuels or tires.

The Act does affect our method of taxing sales of trucks, tractors, and trailers. The old manufacturer's excise tax was properly included in the measure of the sales and use tax. However, under the Highway Revenue Act of 1982, the new 12 percent and the transitional 2 percent tax (operative 4/1/83) are excluded from the measure of our sales and use tax as these are taxes imposed on the retail sale or purchase of the taxed vehicles. 3/11/83.

**295.1248 Inspection Fees.** The Federal Motor Carrier Safety Regulations require an annual inspection of trailers. The motor carrier cannot use the trailer unless the trailer has passed such an inspection at least once during the preceding twelve months and a copy of the inspection report is in the vehicle. A company offers the inspection to its customers in conjunction with the sale of trailers and states that this is an optional charge.

Assuming that the inspection occurs after the trailer is sold and that the contract documents and/or sales literature substantiates that this is truly an optional charge, the optional inspection is not a part of the sale. The inspection service charge should be excluded from the measure of gross receipts which are subject to sales and use tax. 5/9/91.

**295.1252 Luxury Tax.** Effective January 1, 1991, the United States has imposed a new retail excise tax, on the first retail sale of vehicles, boats, aircraft, jewelry and furs, to the extent that the price for such goods exceeds certain specified amounts. The rate of tax is 10 percent. The new tax is excludable from "gross receipts", under Revenue and Taxation Code section 6012(c)(4)(A). The amount of any such tax is nontaxable under the Sales and Use Tax Law, whether imposed with respect to a sale involving a transfer of title or a lease transaction which is treated as a "sale" and "purchase" under Revenue and Taxation Code sections 6006 and 6010. 12/6/90.

**295.1255 Luxury Tax—Nonqualifying Lease.** Where the lessor leases the vehicle under a nonqualifying lease, the first retail sale is the sale of the vehicle to the lessor and the federal luxury tax is imposed on that sale, not on the lease. A nonqualifying lease is a lease with a term of less than one year, such as a daily or other short term rental. Where the luxury tax is not imposed upon the transaction subject to sales or use tax, the luxury tax cannot be passed through to that subsequent taxable transaction and excluded from the gross receipts of that transaction. Thus, no amount of the rentals on daily or short term rentals is excludable from the measure of tax. 6/22/92.

**295.1257 Luxury Tax—Qualifying Lease.** Revenue and Taxation Code section 6012 excludes taxes imposed by the United States upon or with respect to retail sales. The federal luxury tax is a tax on retail sales which includes leases. When a lessor of a qualifying lease elects to pay the luxury tax up front, he or she is paying a federal excise tax on the lease which is a retail sale. Qualifying lease is a lease with a term of one year or more. Thus, the luxury tax on the lease is a tax imposed by the United States upon or with respect to retail sale, and is excluded from gross receipts. Assuming that the lease is a continuing sale and

purchase, the amount excluded is a portion of each rental payment which, if the rental payments are equal, is calculated by dividing the total amount of the luxury tax by the number of rental payments due under the initial term of the lease.

Where the luxury tax is imposed on rental payments, the amount of the luxury tax on each rental payment is excludable from the measure of tax whether the luxury tax is separately stated or included in the rental payments set forth in the lease. Also, if the lessor elects to pay the luxury tax up front and the lessee reimburses the lessor for the tax at the beginning of the lease, the reimbursement is not included in the measure of tax. 6/22/92.

**295.1260 Motor Vehicle Fees and Taxes.** An automobile lessor electing to base the tax on rental receipts may exclude from the measure of the tax the amount of such registration fees as are allowed by section 6012(c)(9). There is no prescribed method for excluding this amount; however, records should be maintained which adequately reflect the basis of any exclusion taken. 1/10/61.

**295.1266 Ozone Depleting Chemical Taxes.** The ozone depleting chemical tax imposed by section 4681 of the Internal Revenue Code is a manufacturer's tax and it is included in gross receipts subject to tax. Section 4681 also imposes an ozone depleting tax on the importer. If the product is used by the importer, it is not includable in the measure of use tax. However, if sold by the importer, the federal excise tax is a recovered expense and includable in gross receipts. 6/28/91.

**295.1270 Property Taxes.** If a purchaser is required to reimburse the seller for the property taxes the seller paid as part of the contract of sale, the amount paid to the seller is included in the measure of tax. Personal property taxes are assessed in California as of March 1 of each year. Although the actual bills for the tax are issued after March 1, the person owing the tax is the person who is the owner of the property as of the assessment date, March 1. It is the assessment date that determines the person liable for the tax, not the date on which the bills for that tax are issued. This means that if the seller owned the equipment in question on or after March 1 of the year of sale, the seller is the person owing the personal property taxes. The purchaser was not liable for payment of the tax to the taxing body. Thus, the purchaser would have reimbursed the seller for the seller's payment of the taxes as part of the sales price of the equipment, and such amount would be includable in the taxable measure.

On the other hand, if the sale occurred prior to March 1, meaning that the purchaser owned the equipment as of March 1, then the purchaser was the person legally owing the tax to the taxing body. If such were the case, the amount the purchaser reimbursed the seller for payment of its tax liability would not be included in taxable measure. 12/29/94.

**295.1280 Sales Tax.** Where foreign sales tax is paid to a foreign automobile manufacturer, and the tax is included in the invoice to the California consumer the amount of the tax is to be included in the measure of the California tax. 1/16/69.

**295.1300 Sales Tax.** Measure of tax on rental receipts does not include separately-stated charge for state and local sales tax. 10/29/56.

**295.1302.500 Tire Disposal Fee.** The California Tire Recycling Act, as amended, imposes a \$0.25 per tire disposal fee on every person who purchases a new tire from a retail seller of new tires. The seller is required to collect the fee and remit it to the state, but may retain 10% of the fee as reimbursement for any cost associated with the collection of the fee. (Pub. Resources Code § 42885 (a).)

Prior to January 1, 1997, the California Tire Recycling Act imposed the \$0.25 per tire disposal fee on every person that left a tire for disposal with the seller of new or used tires. Where a tire dealer sold a new tire and charged \$2.00 for tire disposal as a condition of that sale, the entire \$2.00 charge was subject to tax except for that portion of the fee actually imposed on the customer for tire disposal. That is, the entire \$2.00 was taxable if a customer did not leave a tire for disposal. If a customer left a tire for disposal, \$1.75 of the disposal fee was subject to tax and the remaining \$0.25 amount was a nontaxable fee imposed by the state directly on the customer.

The amended provisions of the Act impose the \$0.25 fee directly on the purchaser of a new tire whether or not an old tire is left for disposal. Thus, whether or not an old tire is left for disposal, the retailer of a new tire collects the \$0.25 fee from its customer as a fee imposed on that customer by the state. That \$0.25 is not taxable. Any amount charged in excess of the \$0.25 as a condition of the sale of a new tire is subject to tax (\$1.75 in the above example).

None of the tire disposal fee charged by a tire dealer who simply disposes of a tire for a customer without selling a new tire is subject to tax because under such circumstances the charge relates entirely to the disposal of the old tire. Furthermore, the customers have the option of leaving the old tire for disposal and incurring an optional disposal fee, or of taking the tire with them and not incurring the fee, the optional disposal fee is not subject to sales or use tax. 3/21/2000. (Am. 2000-3).

[295.1302.850](#) **Vaccination Fees.** Charges by a local government entity for vaccination fees in connection with its sales of dogs and cats are included in the entity's gross receipts from the taxable sales of these animals when the vaccines are given prior to the sale. 5/16/91.

(This opinion was superseded by section 6010.40, operative January 1, 2000.) (Am. 2000-2).

[295.1303](#) **Vapor Recovery—Certification Fee.** Gasoline stations are required to install a Vapor Recovery System by Health and Safety Code sections 41950 et. seq. The Certification Fee mandated by Health and Safety Code section 41961 (and other associated fees, if any) that are passed along to the customer must be included in the retailer's taxable gross receipts. These are costs of doing business just as are the retailer's rent and utility bills. 7/25/95.

#### (f) COSTS AND EXPENSES

[295.1304](#) **Airport Fees.** Airport fees are charged by the airport to aviation fuel retailers for the right to conduct business at the airport. Since airport fees represent another cost of doing business, they are included in the measure of sales tax. The fact that the retailer may subsequently pass such fees on to the purchasing air carrier and separately state such fees on its invoices has no effect on the application of tax. 7/3/96.

[295.1305](#) **Assessment on Citrus Tree Sales.** The California Department of Food and Agriculture levies an annual assessment of one percent upon any licensed nursery dealer on the gross sales of all citrus fruit trees produced and sold within California. Sales tax is applicable to the total charge made by the nursery dealer to its customer whether the assessment is included in the sales price for the trees or whether the assessment is separately stated on the customer's invoice. 5/18/93.

295.1310 **CD-ROM Manufacture.** A taxpayer enters into contracts to produce CD-ROMs for customers. It does not manufacture the disks itself, but subcontracts with out-of-state manufacturers. Molds and silk screens are used in the manufacturing process but do not become a part of the finished product. The out-of-state manufacturer charges a separately stated "mastering fee" for the fabrication of molds and silk screens, but it retains title to them. In turn, the taxpayer generally charges its customer a separately stated "mastering fee." However, in some cases, a customer may be quoted a lump-sum price for the "mastering fee" and disks.

The "mastering fee" whether separately stated or not is part of the charge for the taxpayer's retail sale of the disks. It is immaterial that the molds or silk screens are stored or used outside the state.

The taxpayer also fabricates films from customer furnished artwork. The films are shipped to out-of-state vendors who use them in preparing silk screens and printing plates for disk manufacture and package printing. The customers retain ownership of the films, but generally do not take possession of them. If the taxpayer delivers the films to the customer in California, tax applies to the gross receipts. If the taxpayer ships the films out of state at the customer's direction and the California customer certifies that the films will not be used in California, no tax is due. 4/10/95.

[295.1315](#) **Dealer's Documentary Preparation Charge.** Section 11713.1 of the Vehicle Code allows a vehicle dealer to add to his advertised price a "documentary preparation charge," not to exceed \$35. Such a charge is includible in the dealer's gross receipts. 10/6/78.

[295.1318](#) **Disposal/Overhead Charges Made by Repairers.** Whether a disposal or overhead charge for overhead expenses is subject to tax depends on whether the charge is regarded as related to the sale of the parts, the providing of nontaxable labor, or both.

When the overhead charge made by the repair shop is related only to the sale of the parts, the entire charge is subject to tax (e.g., a charge to cover expenses for ordering inventory and storing parts or for transportation of the parts to the repair shop). If, on the other hand, the charge is related solely to the nontaxable labor performed by the repair shop, then none of the charge would be taxable (e.g., a charge solely to cover expenses related to cleaning the oil remaining on the garage floor after draining oil from car).

The final possibility is that the charge, no matter how it is itemized on the bill to the customer, is actually related to all overhead expenses of the repair shop. The charge would be regarded as related to all overhead expenses of the repair shop if the charge cannot be shown to be clearly related solely to nontaxable labor or solely to the taxable sales of tangible personal property. Under these circumstances, a portion of the charge is taxable and a portion of the charge is not taxable, prorated in the same ratio that itemized taxable charge for parts bears to the itemized nontaxable charge for labor. 1/27/95. (Am. 2000-3).

[295.1319](#) **Energy Surcharge Fees.** A company sells industrial gases and supplies for use in welding operations. The company recently included an "energy surcharge fee" on their sales to non-tax exempt customers. This fee is a cost of doing business that the company passes on to its customers and is therefore part of the cost of materials sold to the company's retail customers. The "energy surcharge fee" must be included in the taxable gross receipts whether or not they are separately stated in a sales invoice provided to the company's customers. 08/17/01.

[295.1320](#) **Engravings.** Separate charge for cost of engraving made in connection with sale of labels or posters is a part of gross receipts from the sale of the labels and posters. 7/5/50.

[295.1330](#) **Fabrication Labor.** Calibration and other start up procedures performed on flow meters by the out-of-state manufacturer, at its facility rather than the customer's jobsite during installation, is fabrication labor and part of the gross receipts from the sales of the flow meters. This is true, even though the charges for such procedures are separately stated on the invoice of sale. The retail sale of such meters to California consumers is subject to use tax, and the manufacturer is required to collect the tax if it is engaged in business in this state or holds a seller's permit here. In addition, if the out-of-state manufacturer ships these meters to a California consumer, pursuant to a retail sale made by another out-of-state retailer who is not engaged in business in California, the manufacturer has made a retail sale pursuant to Revenue and Taxation Code section 6007. When this occurs, the manufacturer is considered the retailer and must report the retail selling price of the property, charged by the out-of-state retailer to the consumer, as part of its gross receipts or sales price. 10/12/93.

[295.1335](#) **Fuel Fees.** The Los Angeles Department of Airports has imposed certain fuel fees by resolution. One resolution establishes license requirements and fees to airlines and other companies providing contract and/or into-plane fueling service. A licensee must pay one cent per gallon for all fuel placed into any aircraft. In addition, if a licensee elects to provide into-plane fueling services as an agent for an oil company that does not have a valid fuel delivery permit, the licensee pays five cents per gallon for all aviation gasoline delivered and input into aircraft at the airport. These fees do not apply when the services are provided to a signatory air carrier whose operating agreements with the airport provide that no such fee should be imposed. The fee imposed with respect to fuel delivered into aircraft appears to be a charge for use of the airport's fuel delivery facilities. As such, when the fuel vendor separately states these charges in an amount that does not exceed the cost to the vendor, these amounts are excludable from the vendor's measure of sales tax as delivery charges. (Section 6012(c)(7).)

A second resolution provides that permittees pay three cents per gallon for all fuel delivered to the airport and fifteen cents per gallon for all lubricants delivered to the airport. Fuel and lubricants supplied to signatory air carriers are excluded from these charges. These fees are not for transportation to the purchaser, but are charges for the right to conduct business at the airport. These charges are costs of doing business by the permittees and are not excluded from the measure of tax. The fact that the vendors may choose to separately state such charges on their billings has no effect on the application of tax. 8/28/90; 10/25/90.

**295.1340 Hazardous Waste Disposal Fees—Automobile Dismantlers.** An automobile dismantler is required to pay fees for disposal of hazardous or toxic waste such as fluids withdrawn from wrecked automobiles, soil contaminated by oil or coolant leaks, and spills associated with its automobile dismantling operations. A substantial portion of the fees results from disposal of contaminated soil. The taxpayer passes on its costs as separately stated fees on invoices to its customers. The amount of fees passed on to customers is calculated as an allocation of the total of such fees paid by the taxpayer within a given period of time. Each customer is charged approximately fifty to sixty cents irrespective of the type of property purchased or the dollar amount of any purchase.

In this case, the charges are not for fees that are incurred because of repairs to the customer's vehicle. Instead, they are general fees incurred as a cost of doing business. The dismantler pays fees for disposal of fluids it withdraws from wrecked vehicles and for contaminating soil. Hence, such charges passed on to the customers who purchase tangible personal property are includable in the taxpayer's gross receipts. 2/20/96.

**295.1360 Label Designs.** If an artist contracts to make and deliver a particular label, all costs of production are part of taxable gross receipts, regardless of how many labels are made and discarded before the one exactly meeting specifications is produced. On the other hand, if, before contracting to deliver a specific label and before customer becomes obligated to accept a particular item, a number of samples are produced for display and selection purposes, such charges are not taxable.

Upon entering into a contract for the production of the label selected by the customer all costs thereafter incurred in such production are not deductible from gross receipts paid or payable for such label. 6/10/53.

**295.1365 Letter of Credit Charges.** The separate statement of reimbursement for an item of expense incurred under the terms of the sales contract is includable in gross receipts. Therefore, a charge for a letter of credit is subject to tax. 3/15/91.

**295.1380 Mark-up on Repair Parts.** A California railroad makes repairs to foreign line cars owned by others which it uses in California. The scheduled price of repair parts involves a mark-up for handling and purchasing expenses.

The mark-up should be included in the price subject to sales tax. 6/26/53.

**295.1384 Membership Fees.** A taxpayer operated a service whereby it sold memberships which permitted the purchaser thereof to purchase goods at reduced prices. The lifetime membership fee was \$399.90 and there was a charge for the first and second annual account maintenance at \$12.00 per year for a total of \$24.00.

For sales and use tax purposes, amounts charged and received for such services constitute taxable gross receipts when such services are in connection with sales of tangible personal property and relate to anticipated retail sales. Thus, such membership fees and account maintenance charges are subject to tax. However, if a purchaser never purchased any goods, the fees and charges would not be subject to the tax. The burden of proving that some purchasers never purchased any goods is upon the taxpayer. 4/12/73.

**295.1387 Packing Charges and Government Inspection Costs.** Taxpayer is in the business of selling tree seedlings, live Christmas trees, and container trees which require special packaging for protection from damage before shipping to the customer by UPS. Also, these types of items shipped in interstate commerce

are required to be inspected and certified by the U.S. Government. The cost of packaging and inspection certificates is charged to customers.

The cost for labor and materials used in packaging an item before it is shipped is not a part of the transportation and must be included in taxable gross receipts. Also, there is no statute which excludes government inspection costs from the measure of tax or permits a deduction for such costs. Accordingly, such charges are taxable if they are in connection with a taxable sale. 11/15/91.

[295.1400](#) **Severance Costs.** “Severance costs” and “going concern” value are properly included in taxable gross receipts from a sale constituting a transfer of tangible personal property. 9/15/65.

[295.1410](#) **Smog Control Certification.** With each application to the DMV for initial registration or transfer of registration of certain motor vehicles, a dealer must also transmit a valid pollution control (smog) device certificate of compliance. There is no requirement that the dealer charge the purchaser for transmitting the certificate, but a dealer may choose to make a separate charge for the transmittal and so be specifically reimbursed for that cost of doing business. Such a charge to the purchaser may not be excluded from the amount upon which the sales tax is computed.

The Department of Consumer Affairs is required to make or authorize certain motor vehicle pollution emission inspections of motor vehicles. The Department is required by statute to charge a certificate fee (usually in the amount of \$7.00) for the inspection. These fees must be deposited in the State’s Vehicle Inspection Fund. Revenue and Taxation Code section 6012(c)(9) excludes from the amount subject to sales tax any motor vehicle fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle. Accordingly, when the fee charged by the Department of Consumer Affairs is paid by a retailer of a motor vehicle and charged to the purchaser, that amount may be excluded from the computation of sales tax due. 5/29/80.

[295.1420](#) **Sorting Lumber.** A retailer entered into agreements with contractors to furnish lumber for home construction at housing tracts. The retailer ordered the lumber from mills and had it delivered to him at a reception site in the tract area. The retailer sorted the lumber at the reception site and delivered lumber of requisite dimensions to individual construction sites. Although the retailer billed the contractor on two separate invoices, the first invoice for the retailer’s cost of the lumber and the second invoice for the retailer’s charge for sorting the lumber and delivering the sorted lumber to individual construction sites, the amounts charged on both invoices constituted the retail selling price of the lumber. 9/3/65.

[295.1430](#) **Vehicle Biennial Smog Exemption.** Effective July 1, 1994, purchasers of new vehicles or of commercial vehicles are allowed to defer their first smog certification renewal from the current two years after purchase to four years by checking a box so marked on the application for registration and by paying an additional \$39 at the time of the initial purchase. Any change in ownership would nullify this exemption, other than the removal of a lessor’s name from the registration of a leased vehicle.

The entire \$39 is transferred to the state: seven dollars goes to the DMV’s vehicle inspection fund, the same as the smog certificate fee in the regular program, even though no certificate is issued for this new extension; and the remaining \$32 goes to a special fund created for this purpose and maintained by the Bureau of Automotive Repair.

If the purchaser elects to purchase the extension, the dealer must collect the \$39, include these charges on the sales contract, and remit each portion of the fee to the appropriate agency. Revenue and Taxation Code section 6012 (c)(9) excludes from the measure of sales tax any motor vehicle fee or tax imposed by and paid to the State of California that has been added to, or is measured by a stated percentage of the sales or purchase price.

While electing to purchase the Smog Biennial Exemption is an option available to the new car buyer, once the election is made, the fee becomes mandatory. However, since the entire \$39 of this new smog renewal extension is imposed by the state, as a fee added to the selling price of the new vehicle, it is excludable

from the measure of sales tax, assuming it is separately stated on the sales contract and paid to the state by the dealer. 8/1/94.

[295.1440](#) **Wages Paid to Temporary Help.** Wages paid by a caterer for outside help to serve meals, tend bar and wash dishes are not deductible from taxable gross receipts for selling meals, even though the amount thereof is separately stated to the customer. 2/15/67.

[295.1460](#) **Wrapping and Packing by Seller.** In the ordinary sale no deduction is allowable to the retailer on account of the cost of wrapping and packing the goods sold, whether or not such a charge is separately stated.

If title to the merchandise passed to the buyer at the time of completion of the order and thereafter the retailer merely holds the merchandise as bailee, the later additional charge for wrapping and packing is nontaxable, except as to that portion representing the sales price of the wrapping or packing material furnished. Such material is, of course, regarded as sold along with the merchandise, and since the original billing did not include the sales price of this merchandise it would necessarily be included as a part of the subsequent billing for wrapping and packing. 11/3/50.

**(g) SERVICE CHARGES GENERALLY**

*See also Service Enterprises Generally. Engineering, design, research and production, charges for, see also Service Enterprises Generally.*

[295.1479](#) **Administrative Expense Charges.** An out-of-state retailer is registered with the Board for collection of California use tax. The retailer adds a separate charge on the customer's invoice for administrative expense. This charge represents a recapture of the retailer's administrative expenses associated with the invoice (sale). The charge is calculated as a percentage of the merchandise amount on the invoice. The "sales price" includes all charges for labor, service, and administrative costs associated with the sales of the property, including administrative expenses associated with the invoice. Accordingly, the taxpayer's recapture charge is subject to California tax. 11/26/96.

[295.1480](#) **"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.

[295.1484](#) **Administrative Service Fee.** A taxpayer is a commercial artist who also provides media placement services. She also contracts to provide administrative services to some clients on a monthly flat retainer fee. The taxpayer charges time against this retainer fee. The administrative services consists of supervision over various projects of her customers. Some of the projects include the production of finished artwork. In such cases, the administrative charges are subject to tax pursuant to section 6012(b)(1) as services that are a part of the sale of tangible personal property. 11/13/91.

[295.1491](#) **C. O. D. Sales.** A taxpayer in the business of selling beauty supplies makes C. O. D. sales. The taxpayer pays the carriers for freight and C. O. D. charges in advance. The carriers collect the selling price of the merchandise, shipping costs, and C. O. D. fees from the customers and remit the entire amount to the taxpayer. The taxpayer's invoices separately state the merchandise cost, tax on that amount, shipping charges, and C. O. D. fees. The taxpayer believes that the C. O. D. charges are charges for service and, thus, not subject to tax.

Section 6012 provides that "gross receipts" include, among other items, services that are a part of a sale of tangible personal property. The taxpayer's C. O. D. charges are part of the taxpayer's cost of doing business and are paid to the taxpayer for services that are part of the sales that the taxpayer makes. The charges are therefore taxable gross receipts. 6/9/81.

[295.1495](#) **Consumer Cooperatives.** A consortium of retailers who band together to reduce operating costs is not a "consumer cooperative" in the context of the Sales and Use Tax Law. Amounts paid as

initial periodic membership fees may not be excluded from the retailers' gross receipts pursuant to section 6012.1. 9/21/93. (Am. 2000-2).

**295.1500 Credit Card Service Charge.** An amount labeled as a service charge, which a grocery store charges customers who purchase goods under bank credit cards in order to compensate itself for the charge which the bank charges the grocery store, constitutes part of the price of the goods sold. 4/19/68.

**295.1502 Custom Business Forms—Handling Charge.** A manufacturer produces, stores and distributes custom business forms for its customers. After production, the forms are moved into storage. As the customers request forms, they are billed for the amount released, plus a handling or release charge. The handling or release charge is a service that is part of the sale and is subject to tax. 9/22/88.

**295.1503 Designer Fees.** There is no general exemption for the sales of custom made property. Although the manufacture or production of custom-made property necessarily involves design work or similar types of creative services, the services required to produce the property in the form desired by the customer are generally taxable as services that are "part of the sale." If the customer contracts solely for design services and there is no associated transfer of tangible personal property, tax does not apply. If the customer then contracts separately for production of the property in accordance with the design, the charge for the property is taxable while the charge for the design work remains nontaxable. However, where sketches and patterns are transferred to consumers, tax applies to the transaction as measured by the amount charged for the sketches and patterns because it is itself a sale of tangible personal property.

When the parties enter into separate contracts for design services and also for the production of custom property, and the charge for the property is unrealistically low, it could be viewed as evidence that a portion of the design fees was in fact being paid for the property. This could lead to the conclusion that the design services and the property were being sold together as a "package" and tax would be due on the entire amount charged. 5/31/91.

**295.1505 Editing and Duplicating Videotapes.** A videographer (1) makes videotapes for weddings, birthdays, etc.; (2) edits customer's home videos; and (3) duplicates customer's videos.

A charge for video photography for a client is subject to sales tax even if the client provides the videotape and camera. Motion pictures produced for private non commercial use, such as weddings, etc., are excluded from "qualified motion pictures". Sales tax applies to the charges for the videotapes. Assuming that the customer's videos are for private, non commercial use, tax applies to charges for editing home videos and tax also applies to charges for duplicating customer's videos. 1/7/93.

**295.1506 Engineering Drawings.** Engineering drawings required by a contract for the manufacturing and installation of a custom built pipe organ are considered to be services which are part of the sale of tangible personal property. Accordingly, the receipts from the drawings are includable in taxable gross receipts whether or not they are billed to the church before the organ is produced.

Whether an organ is considered "machinery and equipment" or "fixtures" under Regulation 1521, installation charges are not included in gross receipts. However, any onsite fabrication is subject to tax. 11/16/64.

**295.1506.150 Expedite Charges.** A manufacturer takes three to four weeks to ship ordered goods to customers. Those customers who require quicker delivery can have their goods shipped in five working days for the payment of a 25% premium above the listed price of the goods purchased.

The 25% expedite charge is part of the gross receipts from the sale because it is a charge for services that are part of the sale, i.e., an amount required to be paid to obtain the goods in the desired time. 10/30/91.

**295.1507 Handling Charge.** A handling charge is subject to tax when it is considered part of a taxable sale of tangible personal property, even if separately stated. If the sale is not subject to sales tax, such as a sale where all items are purchased for resale, the handling charge is likewise not subject to sales tax. If the

sale is partly a taxable retail sale and partly a nontaxable sale (resale), the handling charge is prorated between the taxable part of the sale and the nontaxable part of the sale, provided that the handling charge relates to both parts of the sale.

If the handling charge relates solely to the retail sale of the property, it is fully taxable even if part of a mixed invoice. For example, the taxpayer makes a taxable sale of tangible personal property for \$50 and provided a nontaxable service for \$50 unrelated to the taxable sale. The taxpayer adds a \$3 handling charge to the invoices which relates to the handling of the property. The taxable gross receipts would be \$53 since the handling charge relates solely to the taxable sale. 9/8/94.

**295.1507.150 Handling Fees and Cutting Fees.** The handling fees are incoming shipping fees that a company issues on special orders. The fees are “passed on” to the customer that placed the order. The cutting fees are labor costs charged to a customer for cutting poster boards, illustration boards, or paper purchased by the customer or brought in by the customer who wants the item cut into smaller pieces.

The handling fees are merely an expense and are not deductible from gross receipts. They do not come under the transportation exclusion because that exclusion applies only to transportation costs from the retailer’s place of business to the customer. The cutting fees are taxable labor sales. The cutting of the board is taxable fabrication labor on the customer’s own item. The charges to the customer for such cuts constitute a “sale” subject to tax. A “sale” includes the fabrication of tangible personal property for a consideration for consumers who furnish the materials used in the fabrication. 3/12/92.

**295.1508 Initial Membership Fee.** When an initial membership fee to purchase cosmetic products from a manufacturer includes a training manual, a product brochure, and a video tape, the purchaser (a.k.a. the distributor) is receiving tangible personal property in exchange for the fee. Under these circumstances, the initial membership fee is subject to tax. 1/20/93.

**295.1509 Interior Decoration—Gross Receipts.** Where an interior decorator designs and has manufactured some or all of the furniture provided to a client under a decorating contract, the charge for design, placing the order, overseeing the manufacture, etc., is part of the gross receipts from the sale of the furniture. Such charges cannot be exempted merely by describing them as a “design fee.” 4/11/78.

**295.1509.700 Interior Decorator and Designer Services.** Generally, designers and decorators charge a fee which may be a negotiated amount or a percentage of the selling price of furnishings, labor, and professional services.

Fees for bonafide professional services such as consultation, layout, coordination of furniture and fabrics, selection of color schemes, and supervision of installations, etc., are nontaxable. Billings for such nontaxable fees should be separately stated from fees related to sales of tangible personal property.

Fees charged in connection with acquiring and providing furnishings or other tangible personal property are taxable. A fee charged solely for accompanying a client to showrooms or for otherwise assisting in or recommending the selection of the furnishings is considered part of the taxable selling price of decorator fee. However, tax does not apply to charges for such services when no sales of merchandise are made. Normally, the selling price of the furnishings on which an interior decorator computes tax should be the “retail” price; that is, cost to the interior decorator plus a reasonable markup.

If furnishings or other kinds of tangible personal property are billed at cost and a separately stated fee charge includes overhead, profit, etc., directly related to the property sold, as well as other charges, the total fee charged will be considered subject to tax, unless it is established that a portion of the fee is for nontaxable professional services as described above. 5/29/96.

**295.1520 Layaway Service Charge.** A fee charged for setting aside merchandise at the request of a customer is includible in the computation of “gross receipts” for that transaction provided the customer completes the purchase by paying the full retail price plus the fee. However, where the contract to sell is

not completed and does not result in sale, the service charge is not subject to the tax since there is no sale of tangible personal property. 6/26/62.

**295.1535 Management Fees.** The company enters into an agreement with various providers to furnish medical equipment and supplies to the provider's customers. Under the agreement, it purports to purchase and sell the property to the provider for resale and it receives a "management fee" for its services.

According to the agreement, the company:

- (1) takes the orders directly from the customers
- (2) delivers the items to the provider's customers
- (3) sets up the equipment
- (4) trains the customers, as necessary, to use the equipment
- (5) handles providers customers' complaints
- (6) bills the provider's customers or insurance company, showing the providers as the sellers or lessors
- (7) receives checks from customers and deposits them in the provider's bank account
- (8) takes necessary collection action, and
- (9) maintains an inventory "as is necessary" to fill orders.

Under the agreement, the company appears to be the sole contact point with the customer. It acts as if it is purchasing for its own account rather than on behalf of others. Under these circumstances, it is the retailer of the equipment and supplies. The "management fees" are part of the company's gross receipts. 3/22/93.

**295.1536 Marketing Consultation and Materials.** A business provides consulting services with respect to marketing strategy. The end result is a written report which is given to the customer. The report recommends "corporate positioning and/or thematic direction for acceptance by the client before approval is given to commence creative services." For some customers, the business also provides tangible personal property such as brochures in addition to the reports.

If the consultation services are rendered prior to entering into any contract for tangible personal property, only the charges related to the tangible personal property are taxable. If there is a single contract for both consultation and property, the consultation will be regarded as a service related to the sale of the property and the entire charge will be taxable. 2/1/94.

**295.1537 Membership Card.** A firm sells a membership which entitles the buyer to a special rate at a play fitness center plus a club shirt, canister of balls, free two-hour pass to the center, a quarterly magazine, and a club membership card.

Tax applies to the fair retail selling price of the shirt and the canister of balls. If the fair retail value cannot be ascertained, tax applies to the entire club card fee. 6/11/90.

(Note: Subsequent statutory change re periodicals.)

**295.1538 Membership Fee—Board of Realtors.** A Board of Realtors charges its members a one-time fee to become a member. The member must then pay an additional "membership fee" each month which allows the customer access to an on-line data base of listed properties (extracts of which may be downloaded) and the right to purchase Multiple Listing Service (MLS) publications which are billed separately.

The nonprofit organization also governs the ethical and professional, conduct of its members and takes complaints on such issues. It also provides education for realtors and issues all legal briefs issued by the state and federal authorities.

Based on the extensive services provided by the Board of Realtors, it is concluded that the membership fees are not related to the anticipated retail transactions (sale of MLS publications). The true object of the membership fee is for the services provided by the Board of Realtors, and the right to purchase certain products is a nominal benefit. The membership fee should not be included in the measure of tax for the publications. 2/27/96.

**295.1580 Membership Fees.** An operator of a merchandising service charges subscribers \$60 for the first year and \$10 per year for renewal. In consideration of such service, he sells merchandise to subscribers at wholesale prices. The initial membership and renewal fees are so related to anticipated retail sales as to be includible in taxable gross receipts. 9/1/65.

**295.1585 Miscellaneous Charges Made in Conjunction with Sales of Jet Fuel.** A retailer sells jet fuel to air carriers at a municipal airport. The separately stated charges by the retailer on sales of jet fuel to purchasing airlines and its tax application are set forth below:

(1) Throughput Fees—These are fees charged to the retailer by the airport agent. The retailer arranges verbally with an “into plane agent” at the airport to store and deliver fuel as needed to its customers. The retailer delivers or causes to be delivered sufficient fuel to the airport agent’s storage to cover its sales. The retailer owns the fuel.

The throughput fees, if for temporary storage of the retailer fuel, would be subject to tax since there is no exclusion from the measure of tax for storage fees. The contrary argument is that a throughput fee is a nontaxable transportation charge, as with the “into plane fees” in (2) below, on the ground that all carriers sometimes incidentally store goods temporarily in the course of moving goods from one point to another, and ordinarily an allocation is not made between storage and transportation. For example, if the retailer placed fuel with the airport agent with explicit instructions that the fuel was needed immediately by an air carrier and should be transported as quickly as possible to the air carrier’s plane, the same throughput charge would nevertheless apply, and it would be difficult to show more than storage incidental to transportation. A storage fee would increase as the period of storage increased; throughput fees are a fixed amount per gallon.

Accordingly it is concluded that a separately stated throughput fee is a nontaxable transportation charge.

(2) Into Plane Fees—“Into plane fees” may be used to describe local tax charges, service fees or commissions.

“Into plane fees” which represent a charge to a retailer by an airport agent to deliver or cause fuel to be delivered into a purchaser’s aircraft from a storage facility at the airport may be excluded from the measure of tax as transportation charges pursuant to section 6012(c)(7) provided that the charge is separately stated to the retailer’s customer.

Such charges may relate to deliveries both by fueling trucks and through fuel distribution systems at the airport.

“Into plane fees” which represent a charge by the airport authority as a retailer would not qualify as a transportation charge since it represents a charge for movement within the retailer’s place of business. Likewise, such a charge from an airport authority which wholesales fuel to retailers is not a transportation charge which is excludable from the measure of tax but rather a service prior to the retail sale by the retailer. In essence, it is a charge by the wholesaler for movement of goods within the wholesaler’s “place of business.”

“Into plane fees” which represent a local tax charge or commissions represent a cost of doing business for the retailer and such charges are not excludable from the measure of tax.

(3) **Ground Power Unit Fees**—These are charges to the retailer by the airport agent to reimburse the agent or delivery party for ground equipment used in fueling and servicing the aircraft, i.e., engine starter, generator, pushtruck, etc. These charges appear to be primarily for the rendering of services not related to sale of tangible personal property (with the exception of ground equipment used in refueling—e.g., hydrant truck/cart). Such services include the providing of electrical power, air pressure for engine starts, washing of windows, pushing of the aircraft from parking stalls, etc. These services are not contingent upon the purchase of fuel.

With the exception of the charge for ground equipment used in refueling, i.e., the hydrant cart, the remainder of this charge is unrelated to the sale of tangible personal property and is, therefore, nontaxable. If the charge for the hydrant cart was separately stated, it too would be nontaxable. This latter charge is minor in relation to the total charge and it is impractical for the retailer to separately state the charge for the hydrant cart. Therefore, the retailer ground power unit fee should be treated as a nontaxable service charge.

(4) **Flowage Fee and/or Airport Delivery Fee**—This is a charge to the retailer by the airport and is subsequently passed on to the purchasing air carrier. The municipal airport charges oil companies and others supplying petroleum products to tenants and users at the municipal airport a gallonage fee for the right to conduct business at the airport.

This fee charged to the retailer and passed along by the retailer to the purchaser is another cost of doing business and, accordingly, is included in the measure of tax. The fact that the retailer may choose to separately state such charges on its billings has no effect on the application of tax. 7/20/73; 4/3/75; 11/18/86. (Am. 2000–1).

**295.1590 Monthly Rental Fees—Video Cassettes.** A machine based video library is implemented at large residential apartment complexes. Residents pay a monthly fee to be a member of the library on a month-to-month basis, without being required to be a member for additional months. For this fee, they receive unlimited borrowing privileges from the library. To prevent hoarding of video cassettes, a penalty fee is imposed on overdue items.

This program is an arrangement to lease video cassettes and is considered a sale and purchase. The membership fees are rentals payable from the lease of the video cassettes and are subject to tax. The only exception would be when a member borrows no cassettes for the month to which the membership fee relates. Penalty fees which are required to be paid relate directly to the lease of video cassettes and are also subject to use tax. 7/9/90.

**295.1600 Pharmacist’s Fee.** A pharmacist’s yearly charge for professional services to a family which includes being on 24-hour call, keeping a file of the family’s prescriptions, pricing sales at a cost plus 10 percent basis and supplying a yearly itemization of tax-deductible expenditures is not subject to tax. The fee, being in the nature of a membership charge, is the same whether any sales are made or not and is not affected by the number or amount of yearly sales. 1/18/65.

**295.1630 Photography Franchise Fee.** A company is a franchisor of its photographic and sales techniques, methods, and procedures. Under the franchise agreement it agrees to furnish “. . . all film, paper forms, order books, mounts, prints, processing service and delivery service necessary to carry out the business of (the franchisee) a photography studio.” The company receives a percentage of the franchisee’s gross sales for these services, supplies and counsel.

The film and processing services furnished to franchisees are “sold” within the concept of that term as used in the Sales and Use Tax Law. The fact that the price of the items sold is determined by a percentage of the franchisees’ gross receipts is immaterial. Tax does not apply to those items shipped in interstate commerce pursuant to the contract of sale or sold for resale. 7/31/73.

[295.1640](#) **Procurement Fee.** A supply company agreed to obtain furniture and fixtures for the outfitting of a hotel. It was to be compensated at the rate of 5 percent of the cost of such furniture and fixtures. Where the supply company placed orders for such property with vendors, on behalf of the hotel, and the invoices were made out to the hotel as purchaser; the supply company acted in the capacity of agent for the hotel. The 5 percent fee, measured by the cost of such property, which the supply company received was an exempt service charge.

Where the supply company purchased furniture and fixtures as a franchised dealer under its own resale certificate, it did not act in the capacity of an agent. It purchased such property for its own account for resale and resold it to the hotel corporation. Therefore, its entire receipts from such transactions, including the 5 percent, constituted taxable gross receipts. 10/30/64.

[295.1660](#) **Preliminary Typing of Ditto Masters and Mimeograph Stencils.** Where a public stenographer specialized in the reproduction of architects' specifications and had to obtain architects' approval of preliminary work prior to making copies by mimeograph and ditto, the preliminary work was not a taxable service in connection with the sale of the mimeographed copies. The preliminary work consisted of organizing the architects' figures and typing ditto masters and mimeograph stencils with carbon copies, which she gave to the architects for approval. The stenographer billed for the various services separately and there was usually a lapse of two weeks to one month while the architects reviewed the work and gave their approval. 7/20/64.

[295.1661](#) **Premium Fee Charged by Auctioneer.** An auctioneer holding an auction on the campus of a university added a "premium fee" of 10% of the sales price to the invoice of all property sold at the auction. While the customers were told that the fee was tax deductible as a charitable donation, the premium fee represented reimbursement to the auctioneer for charges made by the university to hold the auction on campus.

There is no provision under section 6012 to exclude such charges from taxable gross receipts. Accordingly, the amount is subject to tax. 1/30/91.

[295.1663](#) **Real Estate Association Membership Fees.** Membership fees for real estate trade associations entitle members to a variety of services. The services include local lobbying, public relations, business network meetings, a local magazine or newsletter, information and education, adherence to code of ethics, enforcement of professional standards, and arbitration of disputes between buyers and sellers and between brokers and agents.

Some trade associations may operate a real estate store which sells standard real estate forms, signs, and other tangible personal property related to the real estate business. In some locations, the stores are open to the public, while other locations are open to members only. Where the stores are open to nonmembers, a nonmember may pay a higher price for the merchandise sold than to a person who is a member.

In view of the extensive services provided by the real estate trade associations to their members, it is evident that they are essentially service organizations. Therefore, under subdivision (a)(2) of Regulation 1584, charges for membership fees are not subject to sales or use tax. The true object of the real estate trade association membership is that the members benefit from the services provided by the association which are unrelated to anticipated retail transactions. 1/25/96.

[295.1665](#) **Referral Fee Added to Repair Invoice.** A taxpayer provides automotive glass repair and replacement services through a national network of affiliated subcontractors and company (taxpayer) owned stores. The taxpayer also has a reservations division to which a customer needing glass services calls. The reservations division refers the customer to one of the taxpayer's repair shops or affiliated repair shops in the customer's home area.

After the home office of the taxpayer receives an invoice from the repair shop, the taxpayer issues an invoice to the customer (which may be an insurance or leasing company). The amount of that invoice includes the amount billed to the taxpayer by the repairer plus a "referral fee" which is recovered by

increasing the materials and labor components of the repair shop's invoice by a pre-determined percentage or amount. The sales tax invoiced by the repair shop is also added to the total and passed on to the customer. The invoice shows amounts for parts, labor, and tax, without a separately itemized charge for referral. The taxpayer does not add additional sales tax to its invoice based on its mark up for the referral service fee.

The taxpayer is making retail sales of tangible personal property inside this state when its subcontractors or its own repair facilities furnish parts and materials to its California customers. Tax applies to the taxable gross receipts from the retail sale of the parts installed. The "mark up" on the parts representing a portion of the taxpayer's referral fee is part of the amount subject to sales tax. The taxable gross receipts from the sale of parts includes the entire charge for those parts, including any mark up for the referral fee.

Where the repairs are performed by a subcontractor, the taxpayer should provide the subcontractor with a resale certificate to cover the sale of the parts by the subcontractor to the taxpayer. 1/31/96.

**295.1671 Separately Stated Sorting Charges.** Charges for sorting lumber after the lumber arrives at a compound near a construction site are subject to tax. Such charges are services in connection with the sale as contemplated by section 6012. Additionally, the charges represent taxable processing under section 6006(b). 10/10/66.

**295.1675 Service Charge.** A used car dealer adds a service charge for bookkeeping and for handling a customer's vehicle insurance account. Since the charge is mandatory, it is part of gross receipts and subject to tax. 5/13/94.

**295.1675.600 Service Charge for Sale of Firearms.** Since the change in the law requiring private parties to sell firearms only through licensed dealers, a company asks whether the fee it charges to file the required state paperwork to the Department of Justice is subject to tax.

Whether the company is liable for sales tax on the transaction depends upon whether the company is the retailer of the firearms. If an owner of a firearm and a purchaser have negotiated the terms of the sale in advance and then bring the firearm to the company to meet the statutory requirements of the Penal Code, the company is not the retailer of the gun and does not owe tax on the fee or any other charges for the firearm. If, however, an owner of a firearm brings the gun to the company and requests the company to find a buyer, the company is the consignee and the retailer of the firearm, and is liable for sales tax on the sale. In that case, the company must include all fees and charges in the measure of tax. 1/9/92; 2/20/92. (Am. 99-2).

(Note: On and after January 1, 1999, the Department of Justice fee is not includible in the measure of tax, but all other charges remain subject to tax.)

**295.1678 Services in Connection with Sales of Catalogs.** A taxpayer operates three "catalog showroom" retail stores in California. The taxpayer purchases its catalogs from an out-of-state firm that has developed a comprehensive program for production of a basic catalog each year that could be used by a number of different catalog-showroom firms with relatively simple and inexpensive customizing as to any particular user.

The catalog development firm has the catalogs printed by another out-of-state firm. The taxpayer believes that the out-of-state catalog development firm performs services that are not part of the actual production of the catalogs and that such charges should be excluded from the amount subject to tax. These services include but are not limited to:

- (1) Selection of merchandise for inclusion in the catalog;
- (2) Negotiating all merchandise purchase terms with suppliers, then organizing this information and supplying it to member firms;

- (3) Acting as a clearing house for merchandise problems of member firms;
- (4) Providing data processing assistance to members;
- (5) Providing in-store fixture layout assistance to members on request;
- (6) Coordinating buying conferences;
- (7) Maintaining product updates;
- (8) Handling special purchases for members.

Typically, each catalog-showroom retailer (including taxpayer) executes a contract with the catalog development firm in the spring of each year, agreeing to purchase a certain number of copies of the out-of-state firm's basic "Fall" catalog. The contract includes details concerning customizing the catalog to the retailer's particular identity and preferences.

The taxpayer and the out-of-state firm contracted for the sale/purchase of catalogs on the basis of a quoted price per basic catalog, subject to adjustment for additional or nonincluded inserts/sections and/or special charges, such as handling.

Based on the following, it is concluded that all of the out-of-state firm's charges for services in connection with the sale/purchase of the catalogs are subject to tax:

- (1) The contract shows that the agreement is one for the sale/purchase of catalogs only, with the price expressed as a charge for each copy of the catalog.
- (2) The more important of the activities described as "services" are simply a catalog pricing arrangement. The out-of-state firm performs these activities in a proprietary capacity while developing a basic catalog "package" which it sells to many customers each year via contracts for sale of catalogs. The activities described as "coordinating buying conferences," "selections of merchandise for inclusion in the catalog," "negotiating merchandise for inclusion in the catalog," "negotiating merchandise purchase terms with suppliers" (and thereafter furnishing copies of forms containing the resulting information to all member firms who purchase catalogs), and "maintaining product updates" are not services that are provided to the customer's special order for just its needs. Instead the out-of-state firm is selling a pre-packaged product, of which such activities are a part. These activities cannot be separated for the purpose of establishing the product's sale price. Even if the contracts had been written in a form giving special mention to the above services, so as to assign part of the price per catalog to them, the Board would be unable to recognize an exempt status for any of the amounts so assigned. 8/16/78.

**295.1690 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. Thus, charges described by a seller of catalogs as for preproduction research and consultation services and for postproduction merchandising consultation services are part of the taxable sales price of the catalogs, whether separately stated or not. The first "service" is a necessary prelude to catalog production; and the second is furnished only to catalog purchasers who are required to pay for the service when they purchase the catalogs, whether or not it is desired or used. 8/16/78.

**295.1700 "Setting Up" Equipment.** Service charges for a factory trained serviceman to set up equipment sold by the taxpayer and to supervise its initial operation are exempt installation charges, provided no fabricating, assembling, or processing occurs in the "setting up." 12/7/65; 5/15/85.

[295.1710](#) **Short Load Fees.** A short load fee is a mandatory charge the customer must pay for purchasing less than a full load of concrete. It is similar to an expedite or handling charge and is includible in gross receipts subject to tax. 11/26/97. (M99-2).

[295.1720](#) **Special Parts—Charge for Obtaining.** Telephone expense and transportation charges incurred by a seller in connection with obtaining special parts for customers are charges which may not be deducted from gross receipts. 3/26/53.

[295.1760](#) **Television Sets and Antenna.** Separate charges for installation of television sets and antenna, as well as charges for other services after sale is complete, e.g., instruction or adjusting, are not taxable. 1/17/51.

[295.1780](#) **Television Lease Agreements.** A transaction whereby a taxpayer enters into an agreement with a hotel to lease television sets for determinate periods for fixed monthly payments, with the lessor agreeing to install and maintain the appliances for the period of the lease, together with a supplemental agreement giving the lessee an option to purchase the appliances for nominal fees, is considered a sale of the sets, and no amount may be excluded from taxable receipts on account of the services rendered inasmuch as the customer is given no option in respect thereto. 4/14/60.

[295.1800](#) **Testing Charge.** Testing of steel tubing by the manufacturer for which a separate charge is made is a service which is part of the sale and the charge is part of the gross receipts subject to tax. 1/23/50.

[295.1804](#) **Tire Removal Fees.** At an auto dismantler's yard a customer selects a tire which is mounted on the original wheel. The dismantler charges a few dollars for the removal of the tire from that wheel. The customer pays for this service in advance. The customer then has the option to purchase the removed tire or not. The taxpayer's procedure generally destroys the rim so it can no longer be used or resold.

Separately stated charges for removing used tires from their rims, which tires are then sold to the customer, are charges for a service which is part of the sale of the tangible personal property, i.e., the tire. In that case, the tire removal fee is taxable. On the other hand, if the customer pays the removal fee and then rejects the tire, the fee constitutes a charge for a nontaxable service.

Lastly, if title to the tire and wheel is passed to the customer prior to their separation and the separation is truly optional, the charge for the separation of the tire from the wheel is not subject to sales tax. The separation of the tire from the wheel is a service performed on the customer's property that does not constitute taxable fabrication labor. 2/20/96.

[295.1806](#) **Truck Charges.** "Truck charges" are made on all service calls to repair equipment, whether or not any parts and materials are sold. This charge is not to insure that the truck is stocked with parts that might be needed for repairs. Rather, the "truck charge" is a charge for transporting a service person to a service call so that services may be performed. Therefore, the "truck charges" are not includible in taxable gross receipts from the sale of repair parts as long as the parts are sold for a fair retail selling price. 2/4/98. (M99-2).

[295.1810](#) **Vine Cuttings.** A taxpayer operates a nursery. Annually it plants vine stems in the ground to be grown for nine to ten months. After a few frosts, the plants are dormant. The taxpayer digs them out of the ground and ties them into large bundles and the stems are placed in temporary storage.

Orders for the majority of the vine stems were taken prior to the planting. However, the plantings are not identified to any specific customer. Once the rootings are dug up, the customers are notified to pick up their order. Most customers pick up the untrimmed rootings. However, in about 10% of the cases, the taxpayer trims the rootings prior to delivery. The customer is billed separately for the trimming service.

The taxpayer stated that the trimming was done because the unusually wet weather delayed planting. The delay during warmer weather caused unwanted sprouting.

Title to the stems did not pass until after the trimming. Accordingly, the charge for trimming is part of gross receipts. Even if title had passed, the charge for trimming would be taxable processing labor. (Regulation 1526(b).) 1/6/84.

[295.1820](#) **Wharfage Charges.** Fees collected by a port for the privilege of passing merchandise through the wharf facilities are includible in the measure of the sales tax. The charge constitutes a labor or service cost and an expense, which is passed on to a customer as a part of the sale similar in operation to a service station pumping gasoline into an automobile. 9/5/74.

[295.1930](#) **Supervision.** When a person supervises the fabrication of tangible personal property supplied directly or indirectly by the customer, and that supervision is considered to be a necessary component of the fabrication, the supervision is considered to be a part of the fabrication of tangible personal property. On the other hand, when a person provides consulting services only, without having control over the performance by others of the fabrication, such consulting services are not regarded as part of the fabrication. 1/12/90.

[295.2000](#) **Surcharge on Credit Card Sales.** In addition to the price listed for the merchandise, a retailer charges customers a two percent surcharge on credit card sales. This surcharge is imposed to reimburse itself for the cost of processing the credit sale through the card issuer. The surcharge amount is part of the consideration for the sale of the tangible personal property, and is therefore part of gross receipts subject to sales tax. 11/14/91.