

557.0000 TRANSPORTATION CHARGES—Regulation 1628

See also C.O.D. Fees.

557.0003 Actual and Average Shipping Costs. A taxpayer operates a catalog mail order business in California selling to customers in every state. When an order is received at the taxpayer's California location, the merchandise is shipped directly to the customer by common carrier from a central warehouse located outside California. A delivery charge, based uniformly on merchandise price and not on destination, is added to the purchase price and is separately stated. The catalog and order blanks do not state when title to the goods passes to the purchaser.

The taxpayer does not charge its California customers for California sales or use tax on the separately stated delivery charges that it has added on to the purchase price of the goods sold. Instead, it has reported and paid tax measured by the difference between the total delivery charges billed to its California customers and the total amount charged by the carrier for such shipments for the same reporting period.

The taxpayer may not average out its transportation sales for the reporting period and pay tax only on the difference between the total amount billed to its customers and the total amount of its transportation cost for the reporting period. For example, if the taxpayer charges \$10.00 for transportation on \$100.00 sale, the transportation charges for these sales are excluded as follows:

(1) Merchandise price \$100.00 plus \$10.00 transportation charge. The actual cost of the transportation billed to the retailer is \$12.00. Only the \$10.00 is excludable.

(2) Merchandise price \$100.00 plus \$10.00 transportation charge. The actual cost of the transportation is \$3.00. Only the \$3.00 actual cost is excludable as a nontaxable transportation charge.

The result of these two transactions is that the total sales the taxpayer should report on line 1 of the sales and use tax returns should be \$220.00. The taxpayer is entitled to take a deduction of \$13.00 transportation charges. 8/16/95.

557.0005 Actual Cost of Transportation. One of the requirements for the exclusion of separately stated transportation charges from the measure of tax is that the cost of transportation is the actual shipping cost. This actual cost is determined on a transaction by transaction basis. Thus, to be entitled to the exclusion, in addition to the requirement set forth in Regulation 1628(a), the retailer will need to keep records showing the actual cost of transportation for each transaction. The amount of each individual cost of transportation is the amount excludable. 7/24/91.

557.0009 Agent for Customer. A trucking firm does not hold a seller's permit. The firm has arrangements with contractors who place orders for dirt, sand, gravel, and related materials with the firm by phone. The firm then orders the materials from a specific supplier for delivery to the contractors. The firm renders a billing to each customer in the name of the firm and without reference to any agency. Materials are purchased "tax paid" and billed to customers at the same price as purchased from the vendor plus transportation charges which are mostly done by the firm's own trucks.

A weight slip is signed by a representative of the contractor at the time of delivery of the materials and a copy of this weight slip is returned to supplier. The supplier then issues a preliminary Notice of Lien to the customer.

Based on this scenario, the materials are being ordered by the trucking firm as agent for the contractor. The material supplier regards the transaction as an agency transaction as evidenced by its issuance of a preliminary Notice of Lien to the contractor for each transaction. If the sale by the supplier were made to the trucking firm, as principal, for resale and not on behalf of a contractor, the actual perfection of a lien against the customer would be unlawful. The contractor believes the arrangement amounts to an agreement to purchase as agent since many of the contractors have executed written agency agreements with the trucking firm. Therefore, the separately stated transportation charges are not includable as taxable gross

receipts because the transportation services are not performed by facilities of the retailer, supplier, and are derived from delivered price transactions. (Regulation 1628(a) and (e).) 6/7/94.

557.0020 Asphaltic Paving Materials. Asphaltic paving material is manufactured in the vendor's plant according to specifications of the buyer, which vary considerably, and, when hot, is highly perishable and cannot be returned.

(1) Where delivery is made in the vendor's own trucks title passes upon delivery at the destination and charges are taxable.

(2) When delivery is made in the buyer's trucks title passes at the plant site and charges are deductible.

(3) Where delivery is made by an independent public carrier title passes at the plant site upon delivery to carrier and charges are deductible. 6/25/54.

557.0025 Asphalt Paving Materials—Passage of Title. A taxpayer sells asphalt products and mixtures, mineral aggregates, and rip rap, "FOB Plant + tax." In the past, the taxpayer had delivered materials at its plant to its customer's trucks or had provided for outside carriers if the customer did not furnish the trucks. When outside carriers were used, transportation charges were separately stated in the taxpayer's sales invoices. The taxpayer then acquired trucks of its own and, in some cases, began making deliveries itself. The taxpayer did not alter its pricing and billing practices. Transportation charges continued to be separately stated to customers on invoices with the following statement:

"We make deliveries inside the curb line and on the lot at customer's risk only and accept no responsibility whatsoever for damages resulting upon such deliveries. Title passes to buyer upon delivery of goods to the carrier."

The taxpayer has been using the same invoices regardless of whether delivery is made by outside carrier or by its own trucks. It seems appropriate to find that, as a course of dealing between seller and individual buyers, they have explicitly agreed that title to goods passed at the seller's plant. (Commercial Code section 1205.) This agreement may be found in interpreting the word "carrier" as used on taxpayer's invoice to include taxpayer's own carriage facilities. Thus, in this case, the transportation charges involving carriage by the taxpayer's facilities are excludable from the measure of tax. 7/20/72.

557.0052 Conflicting F.O.B. Delivery Terms. When a seller's bid quotation to its customer includes an F.O.B. factory delivery term (with no title clause and delivery is by common carrier) but its customer's purchase order includes an F.O.B. jobsite delivery term, the two delivery terms are in conflict with each other and neither term would be considered to be part of the contract as each party is considered to have objected to the delivery term of the other party under Commercial Code section 2207.

The net effect of conflicting F.O.B. terms is that the contract becomes a "shipment contract" rather than a "destination contract" by operation of section 2401(2) and 2504(a) of the California Commercial Code and title passes on the retailer's delivery of the property to the carrier prior to commencement of transportation. Thus, the seller's transportation charges are excluded from the measure of tax. 9/20/85.

557.0060 Construction Contractors. Where a contractor is the consumer of materials, the charges for transportation of materials from his supplier to his place of business or directly to the jobsite are governed by Regulation 1628, recognizing the supplier as the retailer. Any charges for transportation of such materials from the contractor's place of business to the jobsite are not includable in the measure of tax.

A contractor is the retailer of a fixture that he installs but, if his contract with his customer does not state the sales price of the fixture, the sale price is the cost price of the fixture to the contractor as provided in Regulation 1521 and the net effect with respect to transportation charges is the same as if materials were involved. However, if his contract with his customer states the price at which the fixture is sold, tax applies to that price and charges for transportation are governed by Regulation 1628, recognizing the contractor as the retailer. 2/7/78.

[557.0080](#) **Catalogue Orders.** Where merchandise is ordered from a retailer on the basis of catalogue description and number, prices to be f.o.b. point of shipment with delivery charges separately stated, and where no agreement is made respecting passage of title and risk of loss during transit, delivery to be taken at the catalogue order office of seller, title does not pass until the customer takes possession; therefore, the transportation charges must be included in the taxable gross receipts. 12/8/60.

[557.0085](#) **Concrete Pumping Charges.** A seller of concrete subcontracts the pumping of the concrete at the jobsite. The charges for pumping are added in handwriting to the printed invoice issued for a contract for a delivered price. The pumping charges are transportation charges within the meaning of Regulation 1628(a). Since the “delivered price” did not include pumping charges, such charges are excluded from the measure of tax because they are separately stated and the seller did not deliver the concrete in its own facilities. 11/3/93.

557.0088 **Courier Service.** A company that provides courier service to other companies by delivering documents, paychecks, and memoranda is not delivering tangible personal property that it sells at retail to its customers. Instead, it is only providing transportation services to others who request that certain tangible personal property be moved from one location to another. Therefore, the company (courier) does not owe sales or use tax on its charges for transportation since it is not selling any tangible personal property at retail. 3/5/96.

[557.0090](#) **Delivered Price.** Delivery charges for sand and gravel delivered by a retailer to a customer “f.o.b. jobsite” for a delivered price were subject to sales tax because title to the property passed to the customer after transportation of the property. 5/15/70.

[557.0091](#) **Delivered Price.** A County Board of Education (Department) purchases textbooks directly from publishers as part of a statewide bid process administered by the California Department of Education. The publishers bid price is a unit price, which includes the cost of the textbook and what is described as the estimated cost of transportation. The books are delivered directly to the department and that is included in the bid price (without regard to the publisher’s actual cost of such transportation). The publisher has represented to the Department that the stated transportation costs are not the actual costs of transportation but are only stated for the publisher’s own internal accounting purposes.

In this situation, the textbooks are sold for a delivered price. Even assuming that title passes upon shipment, section 6012 provides that such transportation charges are nontaxable only if the separately stated transportation charges do not exceed the cost to the retailer of actual transportation. The publishers based their bid price upon total cost to be incurred in shipping the text books to customers in this state. They may allocate some portion of this cost to individual invoices, for internal bookkeeping purposes. In this case, the “estimated transportation” amount is includable in the measure of tax. 6/24/96.

[557.0104](#) **Delivery Charges.** A company sells imported wines through retail outlets and also holds an off-sale beer and wine license. The company delivers wine from its retail outlets to consumers via its own vans or trucks. A flat charge for delivery is stated on the invoices. The charge remains the same without regard to the time or distance required for delivery and without regard to the quantity delivered. There is no written or oral agreement with the customer regarding the time at which title to the wine will pass to the customer. The company relied on ABC Rules 17 and 27 (California Code of Regulations, Title 4, Chapter 1, sections 17 and 27) to claim that title passed prior to delivery by operation of law so that it was not necessary to have any agreements with the customers.

Tax is due on the transportation charges. ABC Rules 17 and 27 do not support the company’s claim that title passed prior to delivery. The cited portions of Rule 17 merely state that an order must be received from the customer before alcoholic beverages leave the vendor’s premises. Subdivision (e) of Rule 27 merely prohibits delivery from storage facilities off the licensed premises. 6/12/89.

[557.0105](#) **Delivery Charges—Bank Checks.** A bank orders personalized checks to be delivered directly to its customer. The printer bills the bank for the checks plus sales tax reimbursement and postage, which

are all separately stated. The bank debits the customer's account for a lump-sum amount including the sales tax reimbursement paid to the printer and the postage charges.

The bank is the retailer of the checks and is required to collect the use tax on the sales price of the checks sold. The bank is not acting as an agent of the customer. Since there were no separately stated charges by the bank for delivery, the amount attributable to postage is not excluded from gross receipts. 7/2/73.

557.0106 Delivery Charges—Cabinets. A firm makes custom cabinets and delivers them to the customer, but does not install them. The delivery is by its own trucks and the firm's insurance company would pay for any damage to the cabinets if damage occurred during delivery. The firm's contract with its customers provides:

“Please indicate color, delivery date and appropriate options, sign and return one copy with check for one third of the total. Be advised that title to your completed custom cabinetry passes upon completion of the work at our shop.”

The language in the contract is sufficient to pass title and separately stated delivery charges are not taxable. The insurance coverage is not a relevant consideration. 5/31/95.

557.0107 Delivery Charges—Food Product. When transportation occurs before the sale of prepared food is made to the purchaser, sales tax will apply to the charge for transportation. However, if the sale is not taxable, such as cold sandwiches, the transportation charges would not be taxable since the sale of the sandwich is not taxable. In the event that some of the sales are taxable such as carbonated beverages and other separately stated items are not taxable such as cold sandwiches, the taxable delivery charges should be added separately for all taxable items and separately for nontaxable items. When delivery charges are separately stated in this manner, it would help to ensure that the sales tax reimbursement collected is based on taxable delivery charges. 1/25/94.

557.0111 Delivery Charges—Grocery Store. Taxpayer is a grocer which, for an additional charge of \$3.50, will deliver groceries to its customers. The deliveries are made by the taxpayer's vehicle and the sales are not C.O.D. but are charged to the customer's account at the time the order for the merchandise is placed. Since there is no explicit written agreement with the customer passing title to the merchandise prior to delivery, the \$3.50 charge for delivery cannot be excluded from the measure of tax when the sale of the goods is subject to sales tax. If an order delivered to a customer consists solely of food products whose sale is exempt from tax, the delivery charges would, of course, not be subject to tax. On the other hand, if the customer's order includes a combination of merchandise, the sale of some of which is taxable and some of which is exempt, the delivery charges should be prorated between taxable and nontaxable portions of the sale. For example, if taxpayer delivers merchandise to its customer totaling \$15.00, \$10.00 of which is exempt and \$5.00 of which is taxable, one third of the delivery charge would be subject to sales tax. 6/25/97.

557.0112 Delivery Charges Prior to Sale. A printer ships proofs of preliminary and final prospectuses to the customer's lawyers and accountants using airmail or air freight. The recipients may make changes or corrections and return the proofs, or they can accept them without change. The separately stated charge for shipping the proofs is part of the gross receipts of the sale of the finished prospectuses. These charges are merely one of the costs of producing the finished products, and they may not be deducted or omitted from the gross receipts, pursuant to section 6012(a)(2). 10/17/75.

557.0115 Delivery of Goods by More than One Carrier. Taxpayer, an interior design firm, is in the business of selling custom furniture which it contracts with third parties to manufacture and ship. All furniture is delivered via common carrier to a local common carrier who then delivers the furniture to the taxpayer's customer. The carrier picking up at the point of origin will deliver only to a receiver/carrier. Thereafter, a local carrier is needed to complete the delivery. The furnishings never come to the taxpayer's office as it is a design studio only. The actual freight costs are billed to the customer.

The application of the tax depends on to whom the manufacturer delivers the furniture. If the manufacturer ships the furniture by common carrier to the taxpayer in care of a local common carrier and the taxpayer then directs the local common carrier to deliver the furniture to the purchaser, then any separately stated charges for transportation from the manufacturer to the taxpayer in care of the local common carrier are included in the measure of tax. That shipment is not “directly to the customer.” Only the separately stated charges for transportation of the property from the local common carrier from which shipment is made directly to the purchaser are not taxable.

On the other hand, if the manufacturer ships the furniture by common carrier to the purchaser in care of the local common carrier and the local common carrier then delivers the furniture to the purchaser, the property is considered as being delivered “directly to the purchaser,” notwithstanding the fact that more than one carrier may be used to complete the delivery to the purchaser. In such case, tax does not apply to the separately-stated transportation charges. 2/28/97.

557.0120 Destination Price—Reduction of. When a destination price is reduced by reason of the purchaser picking up the goods at the shipping point, tax applies to the actual price paid. 1/17/50.

557.0130 Drop Shipments. An out-of-state retailer engaged in business in this state receives an order from a purchaser who is not located in California and is not a retailer engaged in business in this state. The purchaser indicates that the merchandise is being purchased for resale to a consumer. The retailer is not told of and does not learn the name or address of the consumer. The purchaser hires a common carrier to pick up the products on a “will call” basis from the retailer’s out-of-state location and deliver it to the consumer. Title to the merchandise passes to the purchaser at the retailer’s out-of-state location.

This transaction is a drop shipment. Revenue and Taxation Code section 6007 imposes sales tax or use tax liability on the drop shipper when the delivery of the merchandise is to a consumer in California. A drop shipment generally involves three persons and two sales. The three persons are the true retailer, the drop shipper, and the consumer. The two selling events are 1) the true retailer’s contract to sell property to the consumer and 2) the true retailer’s contract with the drop shipper to purchase the property and to have the drop shipper deliver the property pursuant to the true retailer’s instructions.

When the drop shipper is engaged in business in this state and the true retailer is not, the drop shipper’s delivery of property to a California consumer is a retail sale and subject to either sales tax or use tax. The tax consequence does not change when the merchandise is delivered by the drop shipper to a third party common carrier at an out-of-state location for redelivery to the California consumer.

The drop shipper here made a retail sale when it delivered tangible personal property to its loading dock pursuant to instructions of the purchaser. The sale occurred when the drop shipper completed its obligations with respect to the delivery of the tangible personal property. The fact that the drop shipper did not take steps to ascertain whether the consumer is located in California (for purposes of determining the drop shipper’s use tax liability) will not relieve it from the requirement to collect use tax. 09/27/00. (2001–3).

557.0160 Facilities of the Retailer. A company hauling goods sold by it at retail is not acting as a common carrier and, where title to the goods is found to have passed at point of delivery to the consumer, charges for transportation by the facilities of the retailer are not exempt. However, under section 6012(c)(7), charges for transportation by independent haulers after July 1, 1964 may be excluded from the measure of the tax. 9/29/64.

557.0161 Facilities of the Retailer. Where a building materials supply company is owned by a sole proprietor who also owns all the stock of a corporation operating as a common carrier trucker, the engagement of the corporation to haul goods sold to the customers of the proprietor does not result in delivery being made by facilities of the retailer. The corporation is a separate entity from the sole proprietorship. 8/1/91.

557.0180 Facilities of the Retailer—Delivery Between. Charges for transportation from a retailer’s mail order facilities to its retail stores at which customers place catalogue orders and pick up their purchases,

must be included in the measure of the tax. Delivery from one facility of a retailer to another facility of the retailer does not constitute “delivery from the retailer’s place of business or other point from which shipment is made directly to a place specified by the purchaser.” 11/17/66.

[557.0210](#) **F.O.B. Clause.** When a contract does not contain a specific title provision but does contain the statement F.O.B. point of shipment:

(1) Section 2319 of the Uniform Commercial Code provides that: “The term F.O.B. . . . is a delivery term under which . . . when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in . . . [section 2504 of the Commercial Code] and bear the expense and risk of putting them into the possession of the carrier.”

In other words, the contract is a “shipment contract,” when the contract contains an F.O.B. place of shipment term. Title thus passes, in accordance with the rule stated in section 2401(2)(a) of the Commercial Code, at the time and place of shipment. We are of the opinion that when the property is shipped by an independent carrier, title passes when the goods are placed with the carrier.

(2) Where shipment is made by facilities of the retailer, however, we are of the opinion that the contract is a “destination contract” despite use of the F.O.B. shipping point term. Section 2401(2)(b) of the Commercial Code provides that in the case of “destination contracts” title passes on tender of delivery at the destination. In other words, the sale takes place at the destination. 10/31/74.

[557.0220](#) **“F.O.B.,” Posting of Sign Showing.** In the absence of any specific intention to pass title to the property prior to delivery, when delivery is required under the contract of purchase, the mere posting of a sign in seller’s yard stating: “All materials sold f.o.b. yard,” is not sufficient. Title passes upon delivery and the cartage charges are taxable. 7/23/53.

[557.0226](#) **Forklift Charges.** A taxpayer often delivers supplies to its customers. On occasion, it may unload the merchandise for the customer. In those cases in which it unloads the merchandise, it bills the customer a “forklift charge.”

A charge for unloading property is part of the delivery charge. Under Regulation 1628, such charges are nontaxable only if title passes prior to that unloading. Unless there is an explicit agreement to pass title at an earlier time, a sale occurs at the time and place at which the retailer completes its performance with respect to physical delivery of the property. Since the retailer here did not complete its duties with respect to physical delivery until after the unloading was complete, the forklift charges for unloading the merchandise are taxable. 12/5/90.

557.0233 **Freight Charges.** A joint venture purchased lumber from an out-of-state firm for a delivered price, f.o.b. jobsite in this state. The joint venture paid the freight charges which were deducted from the seller’s invoice and netted out of reported purchases subject to use tax.

The lumber was sold for a delivered price and the freight charges should not be netted from the measure of tax. The joint venture ordered the lumber f.o.b. jobsite at a price which included the delivery cost. The seller shipped the lumber freight collect and invoiced at the quoted price, including freight, and then netted out the freight because the lumber was shipped freight collect. Inasmuch as the lumber was sold for a delivered price and invoiced at the delivered price with freight netted out, the charge for freight, no matter who paid it or to whom it was paid, was part of the sales price. 10/10/66.

557.0240 **Freight Equalization.** Price adjustments, whether labeled “freight equalization” or otherwise, which amounts are not paid by the purchaser to either the carrier or vendor, are excludable from the measure of sales and use taxes. 1/12/55.

[557.0256](#) **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.

557.0258 Hostess Party System. A retailer's merchandise is marketed through a hostess party system. The hostesses take orders and deliver merchandise to the customers. The retailer invoices the hostesses for the merchandise plus a separate shipping charge. This shipping charge is subject to tax under Regulation 1628(a) because delivery is to the retailer's representatives (hostesses) and not directly to the purchasers as required. 12/11/90.

557.0260 House Movers. The moving charges for moving a house sold "as is and where is" are not subject to tax where it is clear title to the house was to pass prior to delivery of the house. 12/16/63.

557.0285 Into-Plane Fees. Into-plane fees represent a charge to a retailer of aviation fuel by an airport agent to deliver or cause fuel to be delivered directly into a purchaser's aircraft from a storage facility at the airport. The transportation of the fuel is not by facilities of the retailer of the fuel. Also, the retailer is not selling the fuel at a "delivered price" as defined in Regulation 1628(b)(1). Rather, the price for the fuel is agreed upon and the separately stated amount representing the charge for the transportation of the fuel directly to the purchaser is added to that price, with any increase or decrease in the actual cost of transportation being borne by or credited to the customer. If the retailer of the fuel separately states such transportation charges in an amount that does not exceed the amount charged by the airport, the fees are for transportation which is excludable from the retailer's taxable gross receipts. 7/3/96.

557.0300 Leases. Leases are continuing sales and tax on charges for delivery of leased property to the lessee, where the rental receipts are taxable, is governed by the regulation on delivery charges.

If delivery by the lessor is optional with the lessee, the property is not leased for a delivered price. However, if the delivery is by facilities of the lessor, the charge is subject to the tax if the lease commences after the property is delivered to the lessee.

If delivery is by facilities other than those of the lessor, a separately stated charge is not subject to tax, notwithstanding where or when the lease commences. However, if the property is leased for a delivered price, the charge is taxable unless the delivery occurs after the lease commences. 7/16/68.

557.0302 Leases. A company's rental contracts states the following: "Lessee agrees to pay, in addition to the rental charges set forth, a freight charge at the rates stated in the company's published Freight Charge Schedule for equipment of the type leased in effect on the date of delivery and installation of the leased equipment, such charge to be both from and to the company's factory, plus any additional costs of local delivery and handling not included in those rates. In the event of exercise by the lessee of its option to purchase, that portion of the freight charge so paid representing the charge for return of the equipment to the company's facilities shall be refunded to the lessee."

This contract is not a delivered price contract. The price of the equipment delivered is not fixed by the rental agreement but may fluctuate, up or down, depending upon the fluctuation in the company's Freight Charge Schedule, which presumably reflects changes in actual freight costs. The delivery charge would thus be excludable from the measure of tax assuming that delivery is made by other than the company's facilities. On the same assumption, additional costs of local delivery charges would be excludable from the measure of tax. Tax is properly applicable to return transportation charges since the charges are mandatory under the agreement. There is no specific statutory exclusion for return transportation charges. 1/4/72.

[557.0310](#) **Leases.** A lessor's charges for transporting leased exhibits to exposition or fair sites are not includable in his taxable rental receipts if the transportation occurs during the term of the lease and if the charges are separately stated, reasonable transportation charges from the lessor's place of business or other point from which shipment is made directly to a place specified by the lessee. A lessor's charges for returning property furnished by the lessee for use in the exhibit to the lessee are not includable in his taxable rental receipts. 4/16/70.

[557.0320](#) **Leases.** The application of tax to delivery charges for property transferred under a lease is the same as it is with respect to property sold when the lease is made under circumstances resulting in taxability of rental charges. Such leases are "continuing sales." 5/22/67.

[557.0330](#) **Loading and Handling Charges.** A retailer of coal makes a separate charge for "loading and handling". The charge is for transporting the coal from the coal pit to rail cars. A separate bill for freight is issued by the carrier. The loading and handling charges are taxable as services that are part of the sale pursuant to section 6011(b)(1). 3/13/81.

[557.0340](#) **Local Dealer for Out-of-State Manufacturer.** The retail sales price of equipment sold by a California dealer and delivered from his stock includes the transportation charges from the out-of-state manufacturer to the dealer; but separately stated local delivery charges are exempt from tax if the title to the equipment passes to the customer before delivery or if the delivery is made by facilities other than the dealer's facilities. The above rules are applicable to sales where the dealer orders the equipment from out-of-state, has delivery made to himself, and then ships to the customer. But where the dealer has the equipment shipped directly from the out-of-state manufacturer to the customer, the taxable retail sales price does not include separately stated transportation charges which do not exceed the actual charges of the carrier. The rules which apply to equipment are also applicable to the sales of parts. But no use tax applies to freight charges for customer's parts shipped out of state for repairs where the charges are billed to the customer, because the title to replacement or repair parts passes to the customer when installed in the item being repaired, which is prior to delivery. 9/30/64.

[557.0360](#) **Local Dealer of Out-of-State Manufacturer.** Where a California dealer has equipment shipped directly from his midwest vendor-manufacturer's Nevada warehouse to a local customer-buyer, the taxable retail sales price excludes only the separately stated charges from the "point of shipment," i.e., Nevada, even though the dealer's cost of transportation included charges from his midwest manufacturer's factory to the local customer. 2/23/66.

[557.0380](#) **Local Delivery by Agent.** When an out-of-state firm arranges for a jewelry party at the home of a California host/hostess, with orders taken at the party, and the merchandise is subsequently shipped to the host/hostess who delivers it to the customers, the host/hostess is acting as the seller's agent and title passes upon delivery to purchasers in California. An added charge for handling, postage and insurance is taxable and may not be deducted from the taxable measure. 5/2/55.

[557.0400](#) **Newspaper Delivery Charges.** A newspaper publisher ships the newspapers with its own facilities from the plant where they are manufactured to locations where the newspapers are received by independent contractors, not employees of the publisher, who use their own resources, not facilities of the publisher, to transport the newspapers directly to residences of individual subscribers. Subscribers are presented with the following renewal notices or invoice: "Name of newspaper, daily and Sunday, \$x.xx (per month)." "Includes applicable sales tax computed to the nearest mill. \$x.xx of your monthly charges is attributable to transportation." The amounts attributable to transportation are based on the actual transportation fees paid by the publisher to the independent contractors who deliver the newspapers to the subscribers. Since the actual cost of transporting the newspapers varies among each distinct service area, the publisher separately states a charge to all its customers in a particular geographic area equal to the *lowest cost* of transportation to any of its customers in that area or route.

Since the publisher is selling the newspapers for an agreed price regardless of the amount of the sales price that is allocated to the delivery of the newspaper, and since the publisher does not alter the subscription price of its newspapers to its customers based on the charges that it incurs for delivery, the publisher is

regarded as selling its newspapers at a “delivered price.” A separately stated charge for transportation is not subject to tax provided:

- 1 . Title to the newspaper passes to the customer prior to the delivery for which the charge is made, e.g., when the independent carrier receives the newspaper for delivery to the customer.
- 2 . The charge is calculated based on the actual costs incurred by the publisher for delivery by the independent carrier rather than on an average monthly basis. For example, the publisher cannot designate a monthly amount for transportation charges on its invoices based on an average of 4.3 weeks per month because the net result would be that some monthly charges are either less than, or in excess of, the actual charges for that particular month (i.e., when the month in question is not 4.3 weeks long). Instead, the billing must be based on the actual cost for that month. If the publisher wishes to use the same figure for each billing cycle, the cycle must be of the same length (e.g., 4.3 weeks) so that the actual cost is the same each billing cycle.
3. The charge does not exceed the actual cost to the publisher of transportation by independent carrier to that customer. Since the publisher wishes to make an identical transportation charge for each customer, that charge cannot exceed the lowest actual cost of transportation to any customer. 11/16/99. (2000-3).

557.0420 Out-of-State Purchases. Where title to property passes to buyer at an out-of-state point of shipment, the actual freight paid by seller may be excluded from taxable gross receipts.

Where property is shipped from out-of-state point to seller’s warehouse in California and thence to the buyer, the only excludable freight charges are those incurred from the California warehouse to the buyer, assuming title passes at that point.

If, in the paragraph above, the buyer picks up the goods at the California warehouse, no exclusion of freight charges may be made.

Where the buyer designates “f.o.b. destination” the freight charges are includable in taxable gross receipts as title passes at destination. 4/7/53.

557.0430 Packaging, Crating, and Freight Charges. The entire charge, including any surcharge, for packaging and crating is always included in gross receipts. Separately stated charges for transportation would not be taxable, but only up to the actual transportation charge paid by the retailer to the carrier, provided the requirements of section 6012(c)(7) are met. 9/9/93.

557.0440 Passage of Title. Where customers are given a choice as to the carrier to be employed, understand that they receive title at the seller’s plant and agree to assume all risk of loss during transit, title to the goods passes at the time the property is delivered to the carrier, and separately stated transportation charges are deductible, even though the charges to the customer are less than actual cost of transportation under the seller’s competitive custom of freight equalization. 12/13/60.

557.0445 Passage of Title—Delivery by Facilities of Retailer. To clarify subdivision (b)(2) of Sales and Use Tax Regulation 1628, if the taxpayer has a statement on the sales invoices that title to the goods passes prior to transportation, the Board considers this to be proof that there was an explicit agreement under section 2401 of the Commercial Code that title did pass prior to shipment. 6/12/96.

557.0449 Passage of Title—Facilities of Retailer. If a taxpayer has a statement on the sales invoices that title to the goods passes prior to transportation, the Board will consider this to be proof that there was an explicit oral agreement entered into prior to the sale. 8/13/87; 7/10/96.

557.0452 Pick Up and Delivery—Reupholstered Furniture. A reupholsterer provides pick-up and delivery service in its own truck in connection with its reupholstering of customer’s furniture. Where the reupholster does not require its customers to have the reupholsterer pick up the furniture from the customer, tax would not apply to the reupholsterer’s reasonable charge for that pick up service. The reupholsterer

should separately state the optional charge on its invoice to its customer. On the other hand, if it is a requirement of the sale (not optional to the customer), it is then considered a “service that is part of the sale” and the charge for the pick up service would be subject to sales tax. Where the reupholstered furniture is being delivered back to the customer in the reupholsterer’s truck, the charge is taxable unless there is an explicit written agreement executed prior to the delivery that title is to pass to the customer prior to delivery. 7/11/96.

557.0455 Postage and Handling Charge. A firm bills a standard “postage and handling” charge without regard to how close or far the customer is from the warehouse. In aggregate, it attempts to recover the total cost of transportation, but it does not have the ability to determine transportation costs on any particular item. While under conditions set forth under Regulation 1628(a) the retailer may deduct the actual cost of transportation when it makes a charge for “postage and handling,” to be entitled to the exclusion it must retain records showing the actual cost of transportation for each individual transaction. If it fails to do so, the total of such charges is included in the measure of tax. 3/13/97.

557.0460 Price Adjustments. If a vendor, to equalize his price with his competitor, separately states that actual freight paid or to be paid to the carrier, and shows the balance of the total charges as the sale price, with title passing at the point of shipment, the latter figure is the measure of the tax, even though it is less than it would be if the vendor did not have to meet his competitor’s price. 12/20/54.

557.0465 Prorated Handling Charge. Taxpayer prepares individualized diet analysis reports from information submitted by persons in response to a questionnaire requested from the taxpayer. A computer analysis of the dietary information is prepared and bound and returned to the customer, along with a specified number of pamphlets on nutrition. Additional pamphlets are available for a fee. A \$2.00 charge is made for postage and handling on the shipment of the analysis report and pamphlets.

The analysis of the dietary information is an exempt service resulting in a report based on customer furnished information even though some tangible personal property is incidentally transferred. The pamphlets furnished with the report are sold and are subject to tax unless exempted for some other reason such as sales in interstate commerce. The measure of tax for these pamphlets is the same for additional pamphlets ordered separately. The postage and handling charge is exempt to the extent of the actual cost of postage, separately stated on the sales document, and the portion of the handling charge pertaining to the report, provided the records support the portion claimed as exempt. 4/3/91.

557.0480 Pumping Concrete. Where concrete, discharged from ready-mix trucks is pumped through hoses or pipes to the point of use on the job, the pumping operation is essentially a transportation function, and the charges therefor shall be treated as transportation or delivery charges. 11/2/66.

557.0484 Purchase of Equipment. A company purchased equipment from an Italian firm in Italy. The purchase order stated a price FOB Italian port and a price “CIF Oakland delivery” for a “total price CIF Oakland.”

Section 2320 of the Commercial Code defines “CIF” to mean the cost of goods and the insurance and freight. The shipping charge was not separately stated. It is, therefore, not necessary to determine whether the contract was for a delivered price or where title was transferred. Tax is due on total contract price which includes the CIF charge. 8/17/92.

557.0490 Risk of Loss. The Uniform Commercial Code separated risk of loss from title. Therefore a statement regarding risk of loss is not a statement regarding passage of title. 10/22/90.

557.0508 Sales of Checks by Banks. When there is no explicit agreement between the bank and its customer as to when title to the checks passes to the customers, section 2401(2) of the California Commercial Code would be applicable. This section provides that, unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with the physical delivery of the goods. Section 2401(2)(a) provides that, if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer

at the time and place of shipment. Since the bank is only required to send the checks to its customers but is not required to deliver the checks to them, title to the checks passes to the customer at the time and place of shipment pursuant to section 2401(2)(a). Therefore, any separately stated charges made by the bank for transportation are not subject to tax. 12/22/70.

557.0520 Seller as Carrier. A seller, acting as a carrier of the product he hauls, who retains title to the goods to be delivered, must pay sales tax on the delivery charges as a part of the selling price. 3/16/65.

557.0540 Segregation or Application of Goods by Seller. Where there is no real segregation or appropriation of building materials in a seller's warehouse at the time a purchaser's order is placed, and the seller is required to subsequently deliver the goods to the buyer or at a designation job site, title to the goods does not pass until such delivery is made. This being true, transportation charges of the seller for the delivery of such goods prior to passage of title are properly includable in the measure of the sales tax. 2/25/53.

557.0562 Separately Stated Charges—Verbal Contract. A verbal contract made by telephone in which the amounts of materials, tax on materials, a delivery are allegedly stated separately does not support an exemption for delivery charges when written confirmation and sales invoices are prepared on a lump-sum basis. The written confirmation constitutes a delivered price bid and it supersedes the telephone conversation. 3/20/90.

557.0564 Shipment from Outside California on Order Placed in California. A taxpayer having an office in California receives an order from a California buyer. The property ordered is shipped from the taxpayer's out-of-state factory directly to the buyer in California. Shipping charges are separately stated. Tax applies to the shipping charges only if the property is sold for a delivered price or is delivered by the taxpayer's facilities and the sale of the property occurs after shipment. 12/2/93.

557.0570 Shipment via Warehouse. A firm selling custom furniture orders merchandise for its clients from around the world. The suppliers ship directly to the customers. The firm pays the carrier and bills the customer the actual freight charges separately on the invoice. In the case of merchandise from a foreign country, the goods are picked up at the dock by a regional carrier and taken to a public warehouse in the firm's home city. The warehouse, which also is a common carrier, notifies the firm and its client and then delivers the goods to the customer. The firm never takes possession or handles the property at any point in the movement. The separately stated transportation charges are excluded from the measure of tax. The fact that more than one carrier is used or a public carrier's warehouse is used as a necessary incident to the transportation does not affect the exclusion as long as the goods were not shipped to the firm's warehouse. 4/4/97.

557.0573 Stacking and Spreading Charges. Retailers of firewood, hay, wallboard and roofing materials often also provide stacking and/or spreading services upon delivery of the materials to the purchaser. The following examples assume that the tangible personal property sold is subject to tax. Also assumed is that the retailer's delivery charges, including unloading charges, are taxable either because the retailer uses its own trucks and there is not a title clause passing title at the place of shipment, or because the retailer uses a common carrier and the delivery terms are F.O.B. place of delivery.

1. The retailer sells the material to the purchaser and requires the purchaser to pay for delivery and stacking of the material by the retailer. Revenue and Taxation Code section 6012(b)(1) includes any services that are a part of the sale in the measure of sales tax. The stacking charge is a mandatory part of the sale of the material by the retailer and therefore the stacking charge is subject to sales tax.
2. The retailer sells the material but the delivery is optional. However, if the purchaser elects to have the retailer deliver the material then the retailer requires the purchaser to pay for the stacking as well. In this example, the stacking charges are also subject to tax. If the retailer separately states the charge for the stacking, then the stacking charge is a service part of the sale. If a separate statement for the stacking charge is not made, then the charge for the stacking is considered as part of the taxable transportation charge.

3. The retailer sells and delivers the material to the purchaser without requiring the purchaser to pay for the stacking. In cases where the purchaser elects to have the retailer provide the stacking, the retailer does not separately state the charge for the stacking on the invoice. Since a separate statement for the stacking charge is not made, the stacking charge is considered to be part of the taxable transportation charges.

4. The retailer sells and delivers the material to the purchaser. For an additional charge the retailer will also spread the material, e.g., roofing tiles. The charge for the spreading is optional and is separately stated on the invoice. Since this is an optional service and is separately stated, it is not a service part of the sale and is not subject to tax. This is true whether or not the retailer's transportation charges are subject to tax and regardless of whether or not the materials come to rest prior to the spreading. 8/1/03. (2004-2).

557.0575 Standing Order. A regular customer of a business issues a standing order that the following clause is a part of all purchase orders:

“It is understood and agreed that title passes to buyer at shipping point. Seller to set out freight and deduct before computing sales or use tax.”

Invoices issued by the seller did not separately state transportation charges, but did not include tax reimbursement on transportation charges.

The regulation does not require that transportation charges be separately stated on the invoice. The contract between the buyer and the seller clearly provides that title to the property sold passes to the buyer at the point of shipment and requires that transportation charges be set out and deducted and the invoice when read together with the standing order establish a separate statement of transportation charges. Tax does not apply to these transportation charges. 3/17/75.

557.0599 Title Clause. A statement signed by the customer, prior to delivery, which says “I/We, the customer, are aware that title to the material purchased passes at the seller's plant prior to delivery,” is sufficient to meet the requirements in Regulation 1628 (b)(3)(D) that the parties explicitly agree to pass title prior to delivery. 9/28/84.

557.0600 Title Clause. The following will serve as a title clause where:

- (1) Transportation is by retailer's own facilities;
- (2) Transportation charges are separately stated;
- (3) It is for transportation from the retailer's place of business or other point from which shipment is made to the purchaser; and
- (4) The transportation occurs after the sale of the property is made to the purchaser.

“Title to the materials shall pass directly from the seller to the buyer at the shipping point prior to shipment. Seller shall set out and deduct freight charges prior to computing sales or use tax.”

The required title-passage clause must appear on the confirmation, purchase order or other document evidencing passage of title prior to shipment. 1/28/91

557.0602 Title Clause on a Delivery Ticket. A taxpayer sells a substance which is used to seal oil wells to prevent them from seeping. The taxpayer delivers the substance in its own trucks. The taxpayer's sales invoices, which are issued after the substance is delivered, separately state the transportation charges but do not contain a title clause. However, the taxpayer issues each of its customers a delivery ticket similar to a bill of lading which has a statement which reads: “Title to goods passes to customer at warehouse prior to shipment.” The purchaser generally sees the delivery ticket at the time the purchaser orders the substance.

A delivery ticket is considered a part of the documentation for a sale and, therefore, a title clause on a delivery ticket is just as effective to express the intent of the parties as a title clause on an invoice. Thus, the separately stated transportation charges are not subject to the sales tax. 6/23/94.

557.0603 Title Clause on Shipping Document. Taxpayer sells small copiers, plotters, and consumables to end users, mainly within a 30-mile radius of its warehouse. The customers have a choice for transportation from the taxpayer's warehouse to their location. They can ask the taxpayer to ship by a third-party carrier, pick up the property themselves, or have the taxpayer deliver the product in its own truck. If the taxpayer delivers, a separate nominal charge is added on the invoice. Transportation is to occur after the sale of the property is made to the purchaser and is separately stated on the delivery invoice. The taxpayer asks if any or all of the following four clauses on the shipping document would be acceptable to the Board as a title clause for purposes of excluding its transportation charges from sales tax.

- (1) Title: passes FOB warehouse.
- (2) Title: passes prior to shipment.
- (3) Title: to buyer FOB warehouse.
- (4) Title: to buyer prior to shipment.

Clause 2 and Clause 4 will accomplish taxpayer's purpose. Only Clause 2 and Clause 4 establish that title passes to buyer when delivery is made by taxpayer's own trucks. The FOB clauses are sufficient to pass title when delivery is by a third-party carrier, but they are not sufficient when delivery is by the taxpayer's own trucks. In order to accurately reflect the agreement between the taxpayer and its buyers that title is to pass to the buyer prior to shipment in all cases, the taxpayer should use Clause 2 or Clause 4. Clause 4 is preferable because it is more explicit. 5/15/97.

557.0605 Title Passing at the Time of Transaction. A contract containing the statement "title passing at the time of transaction" is ambiguous. When is the "time of transaction?" At the time the order is placed? At the time payment is made? At delivery? If the contract does not contain any other statements regarding title, and delivery is by facilities of the retailer, the transportation charges are included in the retailer's gross receipts and subject to sales tax. 10/22/90.

557.0611 Transfer of Title—Insurance Clause. A seller's insurance coverage provides that a sale occurs when the customer pays for the property. Notwithstanding the treatment of a sale for insurance purposes, title does not pass and the sale does not occur until the seller completes delivery in its own vehicles, unless the contract of sale explicitly passes title prior to the delivery. Since the contract does not pass title prior to delivery, the delivery charges are subject to tax. 5/4/94.

557.0615 Transportation Charges. The buyer's purchase order for imported steel stated, "Shipping point of origin itemized freight charges. Dock Oakland/ Alameda, All Duties Paid." The seller's invoice to the buyer stated, "Including ocean freight and other charges." The ocean freight was shipped by seller from a foreign port under a bill of lading consigned to the order of seller, notice to be given to seller. The seller's customs agent handled the final release from the Alameda terminal under a customs permit. The customs agent prepared a shipping order recognizing the custom agent as the shipper and the buyer as the consignee. The purchaser picked up the goods at the dock.

Since the purchase order required shipment to Oakland/Alameda terminal, which is not owned or controlled by the retailer or its agent, shipment is not considered to have been to the seller or its agent.

In this instance, the seller had the goods shipped to its order, which means that the bill of lading in seller's hands is a document of title. That document vests the seller with the right to direct the carrier to deliver the goods to the person specified. It is not equivalent to a delivery of goods to the seller. In fact, the seller, through its customs agent, ordered the goods delivered to the buyer, and that was the only physical delivery which the carrier made. Thus, transportation charges are excludable from the measure of tax. 11/16/72.

557.0616 **Transportation Charges.** Under the following conditions, the delivery of rock and gravel was considered to have been made in facilities other than facilities of the retailer:

The drivers all owned their own tractors and leased the trailers from the retailer. The drivers were not prohibited from hauling for others. The drivers were paid once a month, based on the weight of the loads they hauled. Each haul was written up on a separate invoice. There was no employee withholding, nor were the drivers on the payroll. There was no direction from the retailer regarding how to do the job. All tractor repairs and fuel were paid by the drivers. There was no evidence of any employee benefits. 11/4/80.

557.0620 **Transportation to Retailer's Place of Business.** The exemption for separately stated transportation charges is limited to charges for the "final transportation" of property to the purchaser or to a place specified by the purchaser. Only transportation terminating in a sale and delivery qualify as final transportation. A retailer may not deduct the cost of transportation incurred in the shipment of goods to him for the purpose of making a subsequent sale and delivery even though reimbursement for this cost is separately billed to his customer. 3/17/66.

557.0640 **Truckers Employed by Retailer.** Transportation by truckers in the retailer's employment is transportation by facilities of the retailer rather than by independent carrier. A trucker is "in the company's employ" and not an independent carrier if he received employee benefits and is treated as an employee for purposes of payroll deductions and taxes. 12/2/64.

557.0648 **Trusses.** A company manufactures and sells trusses to general contractors who build custom homes. The contractors provide plans and specifications and the company assembles the trusses. There are two types of trusses: (1) less than 25 feet across which are banded together and dropped off at the customer's job site, and (2) larger trusses which have to be delivered to the job site in the company's truck and then the truck's boom is used to hold the trusses in place while the contractor's construction crew secures the trusses to the support beam. A transportation fee of \$100 is charged to each contractor. For the larger trusses, the boom operator (truck driver) holds the trusses in place while the construction crew secures the trusses.

There are no contracts which require the company to furnish and install the trusses. The contract only provides that the trusses will be delivered for a \$100 fee. There is no indication that the company must install the trusses. The contractor is charged \$100 for delivery of the trusses but there is no indication that the driver of the truck who operates the boom has any unique expertise relating to the attachment of the trusses. In the present case, any boom operator could be hired to raise the trusses so that the crew could attach the trusses to the support beams. It is concluded that the company is not a construction contractor because it is not, pursuant to a construction contract, required to furnish and install tangible personal property.

There is no contract which calls for title to pass prior to delivery, so unless the trusses are realty at the time title passes, the transportation charges are taxable. The boom operator lifts the trusses up to the support beams so the construction crew can manipulate the trusses into place and secure them to the support beams. Once this crew takes control of the trusses, delivery takes place and title passes. At this point, the trusses are not realty. It is concluded that title to the trusses passes before the trusses become affixed to real property and that the transportation charges are subject to tax. Even if title did pass after the trusses were affixed, the tax result would be the same. It is well established that for the purpose of California's sales tax, the sales of personal property is nonetheless subject to sales tax even though affixed to the buyer's land. (*United States Line, Inc. v. State Board of Equalization* (1986) 182 Cal.App.3d 529.) 4/29/91.

557.0660 **United Parcel Deliveries.** Tax does not apply to separately stated delivery charges for transportation by United Parcel which qualifies as transportation by other than facilities of the retailer. 12/7/64.

557.0667 **United Parcel Service Stamp.** Where a retailer's invoices state that freight and tax are included in the lump sum selling price, the United Parcel Service stamp showing its charge to the retailer on the

package is regarded as a separately stated transportation charge. Accordingly, the amount shown on the stamp is excluded from tax. 9/04/91.

[557.0680](#) **Unloading.** Where a charge for unloading property is made, and title to the property does not pass until it is unloaded, the charge should be handled the same as a charge for transportation prior to delivery and is includable in taxable gross receipts. 4/22/54.

[557.0690](#) **Use of Average Shipping Costs.** A retailer requires payment from the customer prior to shipping the goods sold. It charges a flat fee of \$3.00 for shipping and separately states it on the invoice of sale. The actual cost of shipping is not known until the order is filled and the property shipped. Under the circumstances, an average cost of shipping cannot be used to calculate the exclusion from tax for transportation charges. Only the actual cost of transportation on each order may be excluded from tax under section 6011(c)(7) and 6012(c)(7). 4/21/89.

557.0700 **Water—Service Charges.** Charges for delivering water by tank truck operated by the seller even though designated as service charges are taxable as receipts from the sale of water without any deduction on account of delivery cost, unless there is a separate statement of the delivery charge and title to the water passes before the transportation takes place. 4/26/65.

557.0720 **“Will Call.”** Where parts sold by a California dealer to a local purchaser are shipped via air freight from out-of-state via “will call,” such freight charges cannot be excluded from the measure of tax if the parts were consigned to the dealer and later picked up by or delivered to the customer. But if the parts were consigned to the customer and delivered to him by a common carrier without assistance or storage by the dealer, then no tax is due on the air freight charges. 9/18/64.