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May 13, 1994

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Mr. S--- H---
E--- A---, Inc.
XX --- Drive
--- ---, NY XXXXX-XXXX

Dear Mr. H---:

This is response to your fax transmittal of May 9, 1994 regarding the application of tax to discounts. You had written previously, and Staff Counsel Pat Hildebrand responded in a letter dated May 4, 1994. You now ask a follow up question.

Ms. Hildebrand explained that a retailer's taxable gross receipts do not include "cash discounts allowed and taken on sales." Later in her letter, Ms. Hildebrand stated, in summary, that "gross receipts do not include cash discounts allowed or taken on sales." She cited the same statutory provision for these statements. (Rev. & Tax. Code § 6012(c)(1).)

You now ask about the following scenario:

"Suppose a retailer mails an invoice to two different customers. Each invoice has a purchase price of \$100.00. In each case a 2% cash discount is offered if full payment is made within 10 days. Customer 'A' pays within 10 days and takes the discount. Customer 'B' waits 30 days before paying and forfeits the discount. Assuming a sales tax rate of 10%, both customers should be charged \$9.80 (.10 x (\$100 - \$2)) in sales tax."

The conclusion in your hypothetical scenario is incorrect. The first statement of the rule in Ms. Hildebrand's letter is the correct one. That is, the statute states that discounts allowed and taken are excludable from a retailer's gross receipts. In your example, Customer "A" was allowed a discount and took it. The measure of tax is therefore \$98 because the \$2 discount is excludable from the retailer's gross receipts. Customer "B" was allowed a discount, but did not

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take it because Customer "B" did not qualify for it. The measure of tax on the sale to Customer "B" is \$100. Since the discount was not taken, it is not excludable from the retailer's gross receipts.

We apologize for any confusion. If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Supervising Staff Counsel

DHL:cl

cc: Out-of-State District Administrator
Ms. Pat Hildebrand