

460.0000 REIMBURSEMENT FOR SALES TAX—Regulation 1700

“Pre-Need” agreements of morticians, cemetery associations, etc., effect of showing reimbursement in, see also Morticians.

460.0005 Advertisement Stating No Sales Tax. A retailer is prohibited from advertising that use tax does not apply to a transaction for which the retailer is required to collect use tax. There is no such prohibition with respect to sales tax. However, unless the retailer clearly states that sales tax is included, the retailer cannot report sales on a tax included basis and thus claim a deduction for sales tax reimbursement. 12/15/93.

460.0010 Billing Pursuant to California Medical Assistance Program (Medi-Cal). Pursuant to Medi-Cal regulations (Title 22, California Code of Regulations, section 51520(c)) payment for medical supplies include an amount for sales tax reimbursement. When the retailer codes his invoice to alert Medi-Cal that the price billed includes sales tax reimbursement, the retailer notifies Medi-Cal that payment will include an amount for sales tax pursuant to the medical regulations. This is sufficient notice to establish the presumption that the property is sold at a price that includes tax reimbursement pursuant to Regulation 1700. Accordingly, amounts billed for such sales should be considered tax included. 10/5/88. (Am. 2003–3).

460.0016 Charge Customers for Obtaining Refund. In an audit of the taxpayer, the staff determined that the taxpayer was leasing equipment and selling materials in connection with its “special” process. The taxpayer appealed the audit determination. While the appeal was in process, the taxpayer collected sales and use tax on its “special” process receipts. Thereafter, the Board reversed the staff’s position and determined that the “special” process was a nontaxable service. The taxpayer and its customers then entered into an agreement in which the taxpayer would file a claim for refund on behalf of the customers.

In this case, there was excess sales tax reimbursement and use tax collected from the customer. In the case of excess reimbursement of sales tax, the taxpayer must refund the excess tax reimbursement in full to the customer from whom an excess amount was collected. The customer’s right to receive a refund of excess tax reimbursement collected cannot be contingent upon the customer’s reimbursement of the taxpayer’s expenses.

In the case of the overpayment of use tax by a customer to a retailer who is required to collect the tax, each customer may directly file a claim for refund with the Board for the overpayment of the use tax. Alternatively, each customer has the discretion to hire a representative to file a claim for refund on its behalf.

Based on the agreement between the taxpayer and the customer, the customer knowingly and willingly entered into the agreement for its convenience. Therefore, the taxpayer may charge for services rendered in filing a claim for refund on behalf of its customers for the overpayment of use tax, but may not do so with respect to the excess sales tax reimbursement. 1/12/96.

460.0020 Collection Not Mandatory. Retailer is not compelled to make an attempt to collect reimbursement for the sales tax from the vendee on all retail sales. The courts have held that section 6052 indicates an intention that the source of the funds for payment of the tax is the purchaser, but that the seller and the purchaser are free to contract in accordance with their wishes as to the total amount of the selling price. 8/8/52.

460.0021 Collection of Sales Tax from Lessee on Fair Rental Value. A lessor of Mobile Transportation Equipment (MTE) has elected to pay tax on the purchase price of trucks it leases. The lessor indicates that in the future, it wishes to purchase the trucks ex-tax by issuing resale certificates and then collect “sales tax” from its customers based on the fair rental value. To simplify accounting procedures and to treat customers with consistency, the lessor proposes to charge “sales tax” on all truck rentals whether or not it has previously paid tax on the purchase price of a specific truck. All amounts collected as “sales tax” would be remitted to the state.

The use tax liability on the lease of MTE purchased under a resale certificate is payable by the lessor rather than the lessee. Since the lessor did not make a timely election to pay tax on fair rental value for its existing inventory, the lessor has no election to pay tax measured by fair rental value by collecting further tax from the lessees on the tax-paid trucks. The lessor must abide by the tax consequences of its choice on the trucks it paid tax upon the purchase price. 7/30/90.

[460.0022](#) **Credit Interest.** Under *Decorative Carpets, Inc. v. State Board of Equalization* 58 Cal.2d 252, a tax refund may be conditioned upon return of tax reimbursement to the buyer by the retailer. However, the case is silent as to the allocation of interest. Accordingly, interest on refunds cannot be conditioned on payment of interest by the retailer to the buyer. 6/4/81.

[460.0023](#) **Discounts Equal Tax Reimbursement.** A retailer offers a discount on selected lines of merchandise. For purposes of administrative convenience, the discount rate is set to equal the rate of sales tax reimbursement. Since the sales tax is equal to the discount, no separate charge for sales tax reimbursement is made to customers. All of the sales at selected registers will be discounted. The retailer will be in compliance with Regulation 1700 as long as he fully advises his customers before the sale that the particular merchandise sold at the particular register will receive a discounted price and that a resulting price of taxable items does include reimbursement for sales tax. 4/7/77.

[460.0024](#) **Excess Tax Reimbursement.** An overage in a tax reimbursement account in the taxpayer's records is not excess tax reimbursement which must be returned to the customer provided that amount is not the result of the collection of tax reimbursement on a nontaxable sale, reimbursement in excess of the taxable amount, reimbursement at a rate higher than the actual rate, or mathematical or clerical errors. For example, an overage resulting from rounding that occurs by following prescribed reimbursement charts is not excess tax reimbursement subject to refund to the customer or payment to the state. 10/29/96.

[460.0024.100](#) **Excess Tax Reimbursement—Combination Packages of Food and Non-Food Items.** Taxpayer sells a variety of combination packages that may contain both food and non-food items. These combination packages may be different varieties of holiday baskets, e.g., baskets containing packages of coffee along with coffee cups; cheeses along with wine or sparkling cider; candy and toys in the same basket; or cakes with non-edible decorations. Is the taxpayer required to segregate the value of the food and non-food items or can the taxpayer elect to charge tax on the entire price of the combination package being sold?

The language in subdivisions (b) and (c) of Regulation 1602 makes it mandatory for the taxpayer to segregate between the food and non-food products contained in the combination package and does not establish conditions that allow retailers, at their option, to pay tax on the food products in combination packages.

If the retail value of a combination package, exclusive of the container, consists of more than 10 percent non-food products, the taxpayer is required to segregate the retail selling price of non-food merchandise from the selling price of the combination package and pay tax measured by the retail selling price of the non-food merchandise. In the case of a cake or other bakery good, the taxpayer is required to make a similar segregation when more than 50 percent of the total retail value of the cake or bakery good represents the value of non-edible decorations.

Whether a retailer may add sales tax reimbursement to the sales price of the tangible personal property sold at retail to a purchaser depends solely upon the terms of the agreement of sale. (Regulation 1700(a).) The retailer is not required to collect sales tax reimbursement from its customers at all. Nor is the retailer prohibited from selling combination packages on a tax-included basis by posting a sign or including a price tag or advertisement that the sales price of its combination packages include sales tax reimbursement. In that situation, the retailer would subtract from its tax-included gross receipts the amount of sales tax due on the non-food items or the non-edible decorations, and report that amount to the Board. If no records are kept that substantiate the value of the non-food items or non-edible decorations, the retailer would incur a liability to the Board measured by the reasonable value of the non-food items or non-edible decorations.

But where the taxpayer does collect sales tax reimbursement on its sales of combination packages, collecting tax reimbursement on the sale of food items included in these packages would constitute excess tax reimbursement. Under Regulation 1700(b), the excess tax reimbursement is either refundable to the taxpayer's customers or payable to the Board. 12/16/03. (2004-2).

460.0025 Excess Tax Reimbursement—Intent to Evade Tax. In a Petition for Redetermination, the taxpayer claims that it charged sales tax reimbursement on design charges which it believed in good faith were not subject to tax. It collected and retained the tax reimbursement only as a way to obtain extra payment for services without causing customer complaints. Therefore, the taxpayer concludes, its failure to pay tax on these charges was not due to an intent to evade tax, but that it intended to defraud its customers, not the state, and the fraud penalty thus cannot be sustained. The taxpayer relied on a statement in *Marchica v. State Board of Equalization* 107 Cal.App.2d 501 (1951) which cited a federal income tax case.

Federal income tax cases for the statement in question are not relevant because the sales tax, unlike the income tax, can be passed on to customers as a separately stated charge. The fraud penalty here is proper since the taxpayer knowingly and intentionally collected money from customers under a false representation that it was sales tax which would be paid to the state and then retained the money as its own profit. There is nothing in the *Marchica* opinion to indicate that the taxpayer had charged tax reimbursement to customers. The only question before the court was whether a mere understatement of tax, without more, was sufficient to sustain a fraud penalty. The court was not asked to decide, and in fact did not decide, whether the penalty is proper when a person knowingly collects and retains tax reimbursement. 10/1/96.

460.0026 Excess Tax Reimbursement—Lease and Sublease Situation. A prime lessor/retailer collected tax reimbursement from a sublessor. The sublessor also collected an amount designated as tax from the sublessee. Under this situation, the sublease is not a taxable sale or use and the proper party to file a claim for refund is the sublessor.

On the other hand, where a prime lessor paid to the state an amount equal to the use tax or rental receipts without billing or collecting reimbursement from the sublessor and the sublessor, not knowing the prime lessor was reporting these amounts, collected and reported tax on its rental receipts, the prime lessor's transaction is a sale for resale. Therefore, the tax paid by the prime lessor is refundable to the prime lessor and tax is correctly due on the sublessor's rental receipts. 5/14/87.

460.0028 Excess Tax Reimbursement—Remitting to the Board. Under Revenue and Taxation Code section 6901.5, when it has been determined that excess tax reimbursement has been collected, retailers must either refund the money to the customer(s) or remit it to the State. Section 6901.5 presupposes that the retailer has not yet remitted the tax to the Board.

In circumstances where the retailer has filed its returns for the applicable tax quarter and remitted the monies to the State, it has complied with its duties under the Sales and Use Tax Law as to sales tax reimbursement. Once the retailer has remitted the tax reimbursement to the Board, the sole legal avenue available for determining the proper application of tax is for the retailer to submit a claim for refund under section 6901, et seq. The Board may only grant a tax refund to the person who paid the tax. If the Board were to deny the claim for refund, the retailer could pursue an action in court for refund of sales tax under section 6933. There is no provision in the law for an action on the part of a nontaxpayer to dispute the application of tax. 1/20/06. (2007-1).

460.0030 Fixed Price Contract. A contract that provides that the buyer will pay tax reimbursement as applicable is not a fixed price contract. If there is a change in the exemption statute or in the tax rate, the application of tax is in accordance with the change. 1/5/95.

460.0040 “Knowingly Computed” Overpayments. Overpayment of less than 1 percent of total tax paid is not evidence of known overpayment. “Knowingly computed” means computed at the point of sale and rung up, and not at the close of the day or some later time when totals are checked. 9/29/64.

460.0130 “No Sales Tax” Promotions. Several times a year a retailer conducts “no sales tax” promotional sales events where the customer pays no sales tax reimbursement and is only charged the amount on the sale tag. The retailer is contemplating posting promotional signs in the store that will read “all prices of taxable items include sales tax reimbursement computed to the nearest mill” during his or her promotional sales events in accordance with Regulation 1700(a)(2)(C). As an alternative, the retailer’s signs may read “Sales tax is included in the selling price and will be paid by [retailer’s name] in accordance with state and county law.”

If the promotional sign and the sales invoice are in conflict with each other, the sales invoice will take precedence because it documents the actual transaction that occurred. For example, the price tag for an item is \$108 and the sales tax rate is 8%. If the aforementioned sign is posted in the store and the sales invoice has only one charge of \$108 or if the sales invoice itemizes charges of \$100 in sales price and \$8 in tax, the sales invoice and the promotional sign are consistent with each other. Both the sign and the sales invoice lead to the same result. If, however, the sales invoice states a sales price of \$108 and tax reimbursement of \$8.84 for a total charge of \$116.84, the sales invoice and the promotional sign are in conflict with each other and the sales invoice will take precedence. 8/15/02; 12/19/02. (2003–3).

460.0140 Offsets. The retailer must actually refund amounts collected as tax reimbursement to his customers rather than give an offset or credit unless he can show one of the following:

- 1 The customer agrees to a credit;
- 2 . The debt running from customer to retailer is acknowledged by the customer or made certain by a court proceeding.

In no event can the retailer satisfy the above requirement by giving customers credit toward future purchases unless specific authorization is obtained from them in advance. 12/15/65.

460.0141 Offsets. Once the parties are advised of the proper application of tax, the offset provisions of Regulation 1700(b)(4) no longer apply. Any subsequent excess tax reimbursement must either be returned to customers or paid to the state. 1/8/92.

460.0144 Offsets—Excess Tax Reimbursement. In general, a taxpayer who is providing a service (not transferring property to customers) would not be entitled to a credit or an offset against its own use tax liability with respect to any excess tax reimbursement collected from customers because it would not be regarded as transferring property within the meaning of section 6901.5 and Regulation 1700(b)(4).

However, when the taxpayer collected the excess tax reimbursement as a result of the Sales and Use Tax Department erroneously taking the position that the transactions constituted sales and leases of tangible personal property, the offset should be allowed against the use tax liability incurred by taxpayer on the same transactions. The offset should only be allowed for the periods before the taxpayer was notified that it was providing a service rather than transferring tangible personal property. 3/14/95.

460.0145 Offsets—Excess Tax Reimbursement. An advertising agency billed a client for finished artwork and for a construction contract to install signs on the same invoice. The agency charged sales tax reimbursement on the construction contract, but failed to do so on the sale of the finished artwork. Although the two errors regarding the sales tax reimbursement were made on the same invoice, this does not mean they are part of the same transaction. Regulation 1700(b)(4) states that tax reimbursement collected on a specific transaction can only be used to satisfy a tax liability arising from the same transaction. The same transaction means all activities involved in the acquisition and disposition of the “same property.” Signs and finished artwork are not the same property. Therefore, the excess tax reimbursement collected in one transaction cannot be offset against the noncollection of tax in another, even if billed on the same invoice. 9/15/93.

460.0146 Offsets—Excess Tax Reimbursement. When a taxpayer transferred property to its customers, it regarded the transfers as sales and therefore collected sales tax reimbursement from its customers and

reported the sales tax to the Board. It was subsequently determined that the property being transferred to the customer was incidental to the performance of a service. As a result, it was determined that the taxpayer had collected excess tax reimbursement from its customers.

Since the taxpayer is the consumer of the property transferred incidental to performing the service, use tax is due on the cost price of the property which was purchased ex-tax. The taxpayer may offset only the excess tax reimbursement which it mistakenly collected against its use tax liability on the use of the property transferred incidental to the providing of the service. Once the taxpayer knew that its transactions were not subject to sales tax, any amounts thereafter collected as sales tax reimbursement cannot be used as offset against its own tax liability. 2/6/95.

460.0148 Offsets—Excess Tax Reimbursement, Construction Contract. A construction contractor is in the business of installing concrete walls on real property for a lump-sum price. The contractor is collecting sales tax reimbursement on the total amount billed to the customer and paying sales tax to the Board.

Premade concrete walls are “materials” when installed as improvements to real property. The contractor is the consumer of materials used in making concrete walls when the contract is for a lump-sum price. Since the contractor is the consumer of the materials and it has not paid tax or tax reimbursement on the purchase price of the materials, it owes use tax on the purchase price of the materials. It owes no sales tax on the contract price and may not collect any amount as sales tax reimbursement.

Because the contractor has been collecting sales tax reimbursement on the full contract price, the amount collected constitutes excess tax reimbursement. Such amounts must be refunded to the customer or paid to the state (as the taxpayer has done).

For past periods, the contractor owes use tax on the purchase price of materials which it purchased ex tax. However, under Regulation 1700(b)(4), since the taxpayer did not knowingly collect the excess reimbursement, the use tax liability will be offset by the excess tax reimbursement remitted to the Board. The contractor must immediately cease collecting such amounts from its customers and instead must report use tax on its purchases of materials. 7/17/95.

460.0148.300 Optional Maintenance Contracts—Tax Reimbursement. The taxpayer is the consumer of repair parts and materials furnished in performing the repairs pursuant to an optional maintenance contract and tax applies to the sale of such property to the repairer or to the use by the repairer of that property. Since no tax is due on the charge for an optional maintenance contract not involving software, amounts collected from customers as tax or tax reimbursement on those charges constitute excess tax reimbursement. This is true even if the amount collected is measured by the estimated cost of parts and materials to be used. 05/21/96.

460.0149 Posted Sign—All Prices Include Sales Tax. A retailer posts a sign that states: “All Prices Include Sales Tax.” The retailer sells an item for consumption on his premises and reports it as taxable, taking a tax-included deduction allowance. He sells the same item to go, at the same price as for consumption on the premises, and deducts the full sales price as an exempt to-go sale.

Civil Code section 1656.1 provides a presumption that the parties agreed to the addition of sales tax reimbursement if a sign is posted that reimbursement will be added to the sales price “of all items or certain items, whichever is applicable.” Based on this provision, it must be presumed that the parties agreed to the addition of sales tax reimbursement to the sales price of all items, even exempt sales, in conformity with the sign actually posted by the retailer. That is, the retailer represented that the sales tax reimbursement would be collected on exempt sales and the customer paid it. This is excess tax reimbursement under Revenue and Taxation Code section 6901.5. However, it is excess tax reimbursement by virtue of the presumption set forth in Civil Code section 1656.1. That presumption is rebuttable. (Section 1656.1(d).) To rebut the presumption, the retailer would have to show that the amount presumed to have been represented and paid as sales tax reimbursement was understood by the purchaser to have been for some other purpose.

On the other hand, if the sign states, “all prices include applicable sales tax,” there would be no excess tax reimbursement included. The meaning of this sign is that sales tax reimbursement is added only to those sales which are taxable. 7/2/87.

460.0150 Posted Tax Included Statements on Vending Machines. A statement on vending machines such as “tax included on all taxable items” or “applicable tax included” presumes that tax is included only on taxable items and no excess tax reimbursement exists. On the other hand, a statement such as “all sales include tax reimbursement” creates a presumption that tax was charged on all sales and, to the extent there were exempt sales, excess tax reimbursement would exist. 9/9/93; 9/28/94.

460.0170 Refund of Excess Tax Reimbursement to Customers. Amounts of erroneously collected sales tax reimbursement, refunded to customers, may be deducted on the retailer’s sales tax return only if the sale and return occur in the same period. If the sale was made in a previous reporting period, the retailer must file a claim for refund rather than deduct the amount refunded on a subsequent return. 8/25/93.

460.0175 Refunds. A taxpayer who is a carpet wholesaler charges and collects sales tax reimbursement on sales of sample sets and store-use merchandise sold to its dealers. If the dealer reaches a certain sales quota in a given year, the taxpayer will refund the amount paid for the samples and store-use items.

In as much as the collection of sales tax reimbursement is a contractual matter rather than a sales tax law provision, the taxpayer may, if he chooses, refund the amount paid which was designated as tax on the subject items. However, the gross receipts from those sales remain taxable and no reduction of taxable sales is allowed because of the refund of the amount paid for the samples, etc., regardless of whether or not the refund includes the sales tax reimbursement paid by the dealer. 6/20/89.

460.0177 Refunds Under SB 263. Gasoline sellers may not submit claims for refund of a district tax declared unconstitutional by the court and the provisions of SB 263 apply. The statement on the pump that the price includes sales tax makes it clear that the tax has not been absorbed by the retailer. The Legislature has provided the only method for dealing with this issue which is a refund to the person bearing the economic burden of the tax. Such person generally will receive effective refunds through the tax credits provided by the legislation. 1/4/94.

460.0180 Refusal to Pay Tax Reimbursement. The retailer is responsible for the payment of sales tax on paper sold by him to the Department of Motor Vehicles. There is no exemption for sales to the State of California or its political subdivisions. Since sales tax is imposed on the retailer, the refusal of the Department to reimburse him does not exempt the retailer from tax liability. 9/23/64.

460.0198 Rounding Off to Nearest Nickel. A taxpayer is proposing to round the total of its charge, after sales tax reimbursement is added to the nearest nickel. For example, when the food and beverage is \$24.45 and tax reimbursement is \$2.08, totaling \$26.53, the taxpayer proposes to round the total up by 2 cents (to \$26.55) and still report and pay the sales tax of \$2.08 on \$24.45. As an example of rounding down, when the food and beverage is \$24.40 and tax reimbursement is \$2.07, totaling \$26.47, the taxpayer proposes to round the total down by 2 cents and still report and pay sales tax of \$2.07 on \$24.40.

If the taxpayer does not indicate to the customer that the additional 2 cents (rounding up) is sales tax (reimbursement), the taxpayer would be increasing its gross receipts by 2 cents but not reporting sales tax on those additional gross receipts. On the other hand, if the taxpayer indicates to the customer that the additional amount for rounding up were sales tax (reimbursement), the taxpayer would be collecting 2 cents excess tax reimbursement. The taxpayer may not do so.

In the example for rounding down, if the taxpayer does not indicate to the customer that the 2 cents being deducted is taken from sales tax (reimbursement), the gross receipts would be decreased by 2 cents but the taxpayer would be collecting excess sales tax reimbursement which the taxpayer may not do (that is, the taxpayer would be collecting tax reimbursement on \$24.40 but receiving taxable gross receipts of only \$24.38). On the other hand, if the taxpayer indicates to the customer that the 2 cents rounding down is reducing the sales tax (reimbursement), the taxpayer would be undercollecting sales tax (reimbursement).

The taxpayer may undercollect sales tax reimbursement as long as the taxpayer reports and remits to the Board the sales tax based on the actual gross receipts, which in this case would be \$24.40.

In summary, this proposal results in improperly collecting and remitting to the Board either more tax than is due or less tax than is due. 4/4/94.

460.0210 Sales Tax Credit. A taxpayer located in this state has been audited and assessed sales tax on certain transactions. The audit may have utilized either a block or random statistical sample. After completion of the audit, the taxpayer decides to do a complete review of sales during the audit period to recover sales tax reimbursement from its customers.

If, as a result of the complete review, the taxpayer is able to collect tax greater than that assessed in the Board's audit, the taxpayer is not entitled to keep the excess. The Board could issue a new determination for the same period, assessing the tax with respect to transactions not included in the previous assessment. The taxpayer has an obligation to return the excess amount collected to the persons from whom the additional sales tax reimbursement was collected if payment is not made to the state.

If, as a result of the complete review, the taxpayer determines that the actual tax due is less than assessed as a result of the Board's sample audit, the taxpayer is entitled to a refund of the difference, provided a claim for refund is filed within the period authorized by the statute of limitation. The key period is the six-month period commencing with the overpayment. Any claim filed within this period would allow the entire amount of overpayment. In the event the claim was not filed within the six-month period, some portion of the amount subject to refund also may be within the three-year limitation rule, which is measured from the period with respect to which the tax should have been paid.

In a use tax collection situation, the taxpayer must report and pay to the state any additional use tax collected from California customers. If there has been an overpayment, the taxpayer may file its claim for refund if the taxpayer has paid the amount in question out of its own pocket in satisfaction of its obligation. 4/4/88.

460.0220 Sales Tax Included—Medicare. If Medicare determined it was appropriate to include sales tax in the calculation of the basic fee of particular items, it would be appropriate to adjust for sales tax included. However, the Medicare basic fee schedule does not provide a guide for determining which sales Medicare has determined to be taxable and which exempt. The Board will not assume all reimbursement included tax reimbursement because the Medicare Carrier Manual indicates that a "reasonable charge" will include sales tax reimbursement only "where appropriate." Further, it provides sales tax reimbursement will not be a "reasonable charge" if not all providers in the area bill the tax reimbursement. Thus, it is necessary for the provider to maintain sufficient records to show on which items Medicare included tax in the reimbursement and the amount of tax included. 8/2/95.

460.0240 Sister States. Even though other sovereign states are not subject to a sales or use tax imposed directly upon them, a retailer selling to a sister state is liable for sales tax and the question of his collecting reimbursement for the tax is a matter between the retailer and his customer, the sister state. 10/15/69.

460.0242 Internet Order Form. An Internet order form invites purchasers to buy merchandise for an amount plus "tax and shipping." The shipping cost is set at a fixed price for sales in California, to which an additional amount is added for sales outside the state, depending on the destination ZIP code. The purchaser is given a lump-sum statement of the total amount due via e-mail or telephone call. In all cases the purchaser pays a final charge that is greater than the printed prices on the order form.

In the absence of a sales invoice or other documentation containing a separately stated charge for tax and shipping, the Internet order form acts as the agreement of sale. The information contained on the order form states that the purchaser will be charged tax and the purchaser is actually charged some additional amount that appears to be sales tax reimbursement. Therefore, it is presumed that both parties agreed to the addition of sales tax reimbursement. Where tax reimbursement was charged, collected and reported on exempt sales

to out-of-state customers, this is excess tax reimbursement that can be refunded to the customers from whom it was collected. 1/23/02.

[460.0245](#) **Statement That “Tax Is Included Where Applicable.”** A retailer makes sales both inside and outside California. It advertises that its price “includes shipping and sales tax where applicable.”

The statement is sufficient to prevent a conclusion that excess sales tax reimbursement is being collected on exempt sales to out-of-state customers. 3/30/76.

[460.0256](#) **Tax Included.** Use tax collected from customers must be separately stated. The seller must give the buyer a receipt for the tax. Property subject to use tax cannot be sold on a tax-included basis. 4/15/94.

[460.0258](#) **Tax Included in Price.** In determining whether prices are tax included, it is insufficient for a taxpayer to adjust its selling price to include tax liability. There must be a clear notice to customers that tax has been included. 4/22/77.

[460.0260](#) **Tax-Included Prices.** A retailer who claims that its sales were on a tax-included basis must show that buyers were clearly informed of this method of charging at the time the sales were made. The posting of a sign in a foreign language does not constitute clear notification to all customers. Additionally, evidence that tax reimbursement was charged on some invoices refutes claims that customers were notified at the time of the sale. 1/7/94.

[460.0268](#) **Tax Rate on Out-of-State Periodical Subscription.** The tax rate applicable on a subscription to a periodical from an out-of-state publisher is the tax rate that corresponds to the zip code of the subscriber’s residence when the publisher is a retailer engaged in business in this state pursuant to subdivisions (a), (b), or (c) of Revenue and Taxation Code section 6203. 4/23/92.

(Note: Statutory change operative November 1, 1992.)

[460.0280](#) **Tax Reimbursement on Optional Maintenance Contracts.** The charging of tax reimbursement on parts under an optional maintenance contract constitutes excess tax reimbursement. The seller of the maintenance contract is the consumer of all parts used in the performance of the contract. 6/20/94.