

## ATTORNEY GENERAL'S OPINION

OPINION NO. CV. 84-01, October 21, 1983

SUBJECT: Legality of Noting Gross Receipts Tax on  
Invoices and Other Sales Documents  
Ref: AG 83-1731

REQUESTED BY: The Governor

OPINION BY: Richard G. Opper, Attorney General  
Donald P. Krainess, Assistant Attorney General

This office has received a verbal request from you for information on the following:

REQUEST: Is it unlawful for a merchant to designate the amount of gross receipts tax arising from a sale of goods or services on an invoice, bill, sales slip, price tag or other document relating to the sale?

ANSWER: No, provided that no additional language is inserted, or verbal representations made, which state or imply that the gross receipts tax is not being passed on to the customer as part of the purchase price.

## DISCUSSION:

Section 19519 of the Government Code, as amended by P.L. 13-187, section 133, states as follows:

Unfair competition. It shall be unlawful for any taxpayer under this Chapter to advertise, or hold out to the public in any manner, directly or indirectly, that any tax levied hereunder is not considered as an element of purchase price. Any person found guilty by a court of competent jurisdiction of violating this section shall be guilty of a violation punishable by a fine of not more than fifty dollars (\$50.00) for each separate offense.

Although no court has had occasion to interpret section 19519, it is clear that the Legislature's intent was to *prohibit* a merchant from misleading potential customers into believing that the gross receipts tax was not being passed on as part of the purchase

EXHIBIT B

;price. This would be misleading to customers, unfair to competitors, and probably untrue in any situation since the tax is a cost imposed on the seller which must be recovered along with other elements of cost if the seller is to make a profit on the transaction.

The mere statement of the amount of the gross receipts tax arising from any sale on the bill, invoice, sales slip, price tag or other document relating to the sale does not imply that the gross receipts tax is not an element of the purchase price. If, on the other hand, language were added to state or imply that the merchant is absorbing the tax, then such statement would be in violation of section 19519 of the Government Code.

If section 19519 were interpreted to prohibit the mere statement of the amount of gross receipts tax, without any suggestion that the tax was not being passed on to the purchaser, the section would be of doubtful constitutionality. In recent decisions, the United States Supreme Court has enunciated a four-fold test for determining the validity of governmental restrictions on commercial speech as distinguished from more fully-protected speech: (1) the First Amendment protects commercial speech only, if that speech concerns lawful activity and is not misleading. A restriction on otherwise protected commercial speech is **valid** only if it (2) seeks to implement a substantial governmental interest, (3) directly advances that interest, and (4) reaches no further than necessary to accomplish the given objective. Central Hudson Gas & Electric Cor. v. Public Service Commission of New York, 447 U.S. 557, 100 S.Ct. 234 1980 ; Metromedia, Inc. v. City of San Diego, 453 U.S. 490 101 S.Ct. 2882 (1981). A **statutory** prohibition of the statement of the amount of gross receipts tax in a manner which is not misleading would not implement any substantial governmental interest, and, therefore, would not justify any *abridgment* of a merchant's right of free speech.

Any prior *opinion* by this office on this subject is hereby withdrawn to the extent it is *inconsistent* with this opinion.

OFFICE OF THE ATTORNEY GENERAL

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cc: Compiler of Laws  
AG Opinion File