



STATE BOARD OF EQUALIZATION

July 24, 1991

Mr. R--- P---
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Re: Application of Sales Tax to Sales of Gasoline
Service Stations

Dear Mr. P---:

Your letter dated June 11, 1991, in which you request a legal opinion concerning the application of the California sales tax to the sale of gasoline service stations has been forwarded to me for a response. According to your letter, the facts are as follows:

“Taxpayer owns retail gasoline service stations located in California. These service stations are being sold to a purchaser who will continue to operate the stations at their current location. The assets being sold consist of underground storage tanks, pumps and canopies. The pumps are mounted to a concrete ‘island’ and the canopies are mounted to vertical pipe which are imbedded in the earth.”

You inquire whether sales tax applies to the sale of the underground storage tanks, the pumps, and the canopies.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. The issue raised by your letter is whether the sale of the storage tanks, the pumps, and the canopies is a sale of real or personal property. If the latter, the gross receipts from the sale of these items are subject to sales tax.

Subsections (a) and (c) of Sales and Use Tax Regulation 1596, entitled “Buildings and Other Property Affixed to Realty,” provides as follows:

“(a) BUILDINGS AND MINERALS. The transfer of buildings or minerals or the like affixed to land is taxable as a sale of personal property if, pursuant to the contract or agreement of sale, the buildings or minerals or the like are to be severed by the seller thereof. If, pursuant to the contract or agreement of sale, such buildings or minerals or the like are to be severed by the purchaser thereof, such a transfer is not taxable as a sale of personal property.

“(c) FIXTURES, MACHINERY AND EQUIPMENT, AND DRAPERIES AFFIXE TO REAL PROPERTY. The transfer ‘in place’ of affixed fixtures, machinery and equipment, or draperies is taxable as a sale of personal property when removal of the fixtures, machinery or equipment, or draperies by the seller or the purchaser is contemplated by the contract of sale. The transfer ‘in place’ of affixed fixtures, machinery and equipment, or draperies owned by a lessee of land or buildings to which those items are affixed, is also taxable as a sale of personal property when the lessee-seller has the present right to remove the items either as trade fixtures under Section 1019 of the Civil Code or under the express terms of the lease.”

In the transaction you describe, if the seller owns both the land and the pumps, tank, and canopies, the sale of the tanks and canopies is not taxable unless the contract provides that the seller will sever these items. With respect to the pumps, if the contract provides that the pumps are to be removed by either the seller or the purchaser, the gross receipts from the sale of the pumps are taxable. Otherwise, the sale of the pumps is not taxable.

A different rule applies to the pumps if the seller is leasing the land. Since pumps are trade fixtures under Section 1019 of the Civil Code, which gives the seller-lessee the right to remove the pumps, the sale of the pumps is taxable.

Please note that this opinion is not binding upon the board. Revenue and Taxation Code section 6596 provides the only basis for relief from tax if a taxpayer relies on incorrect written advice from the board. The primary conditions to qualify are that the request for opinion must be in writing and must disclose all relevant facts, including the identity of the taxpayer. Since you have not identified your client, this opinion does not come within the provisions of section 6596 but rather is simply general advice regarding a set of hypothetical facts.

For your information, we are enclosing a copy of Regulation 1596. If you have further questions regarding California sales and use taxes, please do not hesitate to write again.

Very truly yours,

Elizabeth Abreu
Tax Counsel

EA:cl

Enclosure

bc: --- District Office