



STATE BOARD OF EQUALIZATION

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October 28, 1980

Mr. J--- A. F---, CPA
J--- A M--- & Company
XXX --- --- Avenue
--- ---, N.J. XXXXX

Dear Mr. F---:

Re: Sales of Truck Tires

This is in response to your letter of September 25, 1980, received via the office of Mr. Richard Nevins, Board Chairman.

Your client/taxpayer is or is contemplating storing truck tires in a public warehouse in California. Sales of the tires will be made principally to small trucking companies who are common carriers engaged in interstate commerce; other sales will be made to distributors who will resell the tires to the trucking companies. Sales will be made via direct mail advertising to California customers as well as out-of-state customers.

You wish to know whether your client is subject to collecting a sales tax from such sales, and ask five hypothetical questions enumerated below. The answer follows each question.

“1. Based on the storage of tires in a public warehouse in your state, is the taxpayer required to register as a vendor and collect and report sales and sales tax?”

(a) If the sole activity of the taxpayer in relation to the tires is the storage of them in a public warehouse, there is no transfer of title or possession, hence no sale, and sales tax would not apply. See definition of “sale” in attached copy of Section 6006, California Revenue and Taxation Code (all sections cited refer to such code).

- (b) If tires located in the public warehouse are sold, the client would be required to obtain a seller's permit, and the provisions of Sections 6066 and 6072 would apply (copy enclosed) unless all sales were exclusively in interstate or foreign commerce. See Regulation 1699, enclosed.
- (c) Whether the client may add sales tax reimbursement to the sales price of property sold at retail depends upon the agreement of sale, as provided in Civil Code Section 1656.1 (copy enclosed).
- (d) Sales tax is imposed for the reason, in the manner, and at the rate specified in Section 6051 (copy enclosed).
- (e) The mere storage of tangible personal property in a warehouse for the purpose of subsequently transporting it outside California for use thereafter solely outside California is excluded from the definition of "storage" and "use" and use tax does not apply. See Regulation 1620(b)(5), copy enclosed.

"2. Based on the use of only direct mail catalogs and circulars and no warehouse located in your state, is the taxpayer required to register as a vendor and collect and report sales and sales tax even though all tires shipped into your state are via common carriers?"

If there is no nexus between the taxpayer and the State of California other than direct mail, the answer is no. No nexus means not only no warehouse, but no office or salesmen, representatives, peddlers, canvassers, agents of dealers, distributors, supervisors, employees, order takers, order mailers, or similar persons or facilities operating within California.

"3. Does your sales use tax law provide an exemption for the sale of truck tires to a common carrier engaged in interstate commerce?"

There is no specific exemption for truck tires per se. There is, however, an exemption for sales of tangible personal property to a common carrier subject to the conditions set forth in Section 6385 (copy enclosed). Such exemption would apply to sales of truck tires, under the prescribed conditions.

"4. If there is an exemption, what is the proper exemption form that the customer must furnish the taxpayer? Please furnish us with a copy of such form."

Regulation 1621 (copy enclosed) implements and makes specific Section 6385, the exemption for sales to common carriers. The contents of the form to be used in claiming the exemption of Section 6385(a) is Certificate C, set forth in the regulation. It is the responsibility of the taxpayer to prepare the form; the Board does not supply it.

“5. Does your sales and use tax law require the reporting of sales and collection of tax for shipment of tires to destinations outside your state from a public warehouse located in your state?”

Use tax does not apply if your client retains ownership of the tires and merely ships them to destinations outside California. If the shipment to the destination outside California is pursuant to a sale of the tires, the sales tax will not apply provided the shipment is by your client's trucks or a common or contract carrier. Documentation of the interstate shipment must be retained for audit purposes. Sales tax will apply if the tires are delivered to the purchaser or his representative in California. See Regulation 1620(a)(3), copy enclosed.

Shipment to a distributor who will resell the tires is a nontaxable sale for resale if a resale certificate is obtained from the distributor and retained (Regulation 1628, copy enclosed).

If any additional information is required, please write the undersigned.

Very truly yours,

Margaret H. Howard
Tax Counsel

MHH:ba

Enc.

cc: Mr. Richard Nevins
Mr. Douglas D. Bell
Mr. D. J. Hennessy