

**STATE BOARD OF EQUALIZATION**

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January 27, 1995

Ms. S--- M---
C--- T--- D--- &
R--- A--- North
XXXX --- --- Avenue, Suite X
---, CA XXXXX-XXXX

Dear Ms. M---:

In a letter dated July 12, 1994, I responded to your letter dated April 19, 1994 regarding the application of sales tax to tire disposal fees collected in connection with a \$0.25 tire recycling fee. I stated that when the charge was part of the sale of the tire, the entire charge was taxable except for the \$0.25 fee imposed on the purchaser by statute. This rule is correct; however, after further review I have concluded that since I did not apply this rule to all the common scenarios which will occur for your members, the conclusion in my previous letter is not entirely accurate. Rather than merely correct my previous letter to you on this subject, this letter supersedes and replaces it. In your letter dated April 19, 1994, you stated:

"In the past, we were told that there is no sales tax charged on the state's \$.25 fee and, if the dealer charges a fee, that there is no sales tax charged on the tire dealer's disposal fee since this was a service provided to the customer and not a product.

"Recently, a speaker from the Board did a presentation for our Southern California association, C--- South, and told them that the tire dealers' disposal fee, except the mandated \$.25[, is] taxable. In addition, he confused the issue more by saying that if the dealer picked up the scrap tires from the customer (for disposal) the disposal fee was not taxable if it was not part of the sale."

Discussion

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property in this state. (Rev. & Tax. Code § 6051.) The taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials, service, or expenses of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.) Thus, unless there is a specific exclusion, charges for services which are part of the retail sale of tangible personal property, such as tires, are included in the taxable gross receipts, as are any other costs of the retailer which are passed on to the purchaser (even if those costs are separately itemized). On the other hand, charges that are completely unrelated to the sale of tangible personal property are not subject to sales tax.

You state that the Board speaker indicated that if the dealer picked up the scrap tires from the customer, the disposal fee was not taxable if it was not part of the sale. This is true: if the fee is not part of the sale of the tires, the charge is not taxable. The disposal fee would not be regarded as part of a sale of tangible personal property if the tire dealer made no sale of tires to the customer (whether the dealer picked up the tire from the customer or the customer delivers it to the dealer is irrelevant to the analysis). That is, if a customer simply wishes to dispose of tires through the tire dealer without purchasing any property from the dealer, none of the disposal fee would be taxable. When, however, the dealer sells a tire and collects a disposal fee, further analysis is required.

In 1990, the Legislature adopted the California Tire Recycling Act. (Public Resources Code § 42860 et seq.) That act imposes a \$0.25 per tire disposal fee on every person who leaves tires for disposal with a seller of new or used tires. The seller is required to collect the fee and remit it to the state, but may retain 10 percent of the fee as reimbursement for any costs associated with the collection of the fee. (Public Resources Code § 42885(a).)

If, prior to the adoption of the California Tire Recycling Act, a dealer made a retail sale of a tire and had charged a disposal fee which was regarded under the Sales and Use Tax Law as part of the sale, the disposal fee would have been a taxable part of the sale. Even with passage of the act, if a dealer of a tire makes a "tire disposal charge" which is regarded as part of the retail sale of a tire, the entire amount would be taxable except for that portion for which there is a basis for exclusion from the measure of tax. Since the \$0.25 tire recycling fee is imposed on the purchaser by statute and not on the tire dealer, we do not consider the \$0.25 as part of the dealer's taxable gross receipts. However, there is no statutory basis for excluding from the measure of tax the remaining \$1.75 charged to the customer *when the charge is part of the sale of the tire*. Thus, the remaining issue to be resolved is when the disposal fee is regarded as part of the sale of the tire.

Since the same analysis applies in many repair shop situations (the replacement of a tire is a repair of the vehicle), I will first discuss the rules applicable to certain scenarios involving

charges that might be made by a repair shop, and I will then apply those rules to the transactions in question here. In each of the scenarios, the repair shop performs repairs and itemizes charges for parts (including any charge for fabrication of parts) and labor (including, e.g., troubleshooting and installation, but excluding fabrication of parts). The repair shop also makes an additional charge for overhead expenses (there are many different designations used to itemize such charges). The charge for the parts is subject to tax and the charge for the labor is not subject to tax. (Reg. 1546(b)(1).) As in the transaction you present, whether the charge for overhead expenses is subject to tax depends on whether the charge is regarded as related to the sale of the parts, the providing of the labor, or both.

When the overhead charge made by the repair shop is related only to the sale of the parts, the entire charge is subject to tax (e.g., a charge to cover expenses for ordering, inventorying, and storing parts or for transportation of the parts to the repair shop). If, on the other hand, the charge were related solely to the nontaxable labor performed by the repair shop, then none of the charge would be taxable (e.g., a charge solely to cover expenses related to cleaning the oil remaining on the garage floor after draining oil from a car). The final possibility is that the charge, no matter how itemized on the bill to the customer, is actually related to all overhead expenses of the repair shop. We would regard the charge as related to all overhead expenses of the repair shop if the charge cannot be shown to be clearly related solely to nontaxable labor or solely to the taxable sale of tangible personal property. Under these circumstances, a portion of the charge is taxable and a portion of the charge is not taxable, prorated in the same ratio as the itemized taxable charges for parts bears to the itemized nontaxable charges for labor.

As we understand the facts in the transactions about which you inquire, the dealer sells a tire and installs it onto the customer's vehicle. As part of the installation, the dealer removes the customer's old tire and, unless the customer chooses to retain it, disposes the old tire. The dealer makes a charge for the tire and for the installation, and makes a \$2.00 charge for each tire itemized as a disposal fee unless the customer chooses to keep the old tires. Under these facts, where the customer pays the \$2.00 charge only when disposing of the tire, we would not regard the charge as related entirely to the sale of the tire nor to all overhead expenses of the dealer, but rather would regard the charge as part of the installation and disposal of the tire. Thus, none of the \$2.00 charge would be taxable. On the other hand, if the customer must pay the \$2.00 charge whether leaving the tire with the dealer for disposal or not, the entire \$2.00 would be subject to tax except for the portion of the charge (\$0.25) that is actually collected pursuant to the California Tire Recycling Act.

In summary, if a tire dealer makes no sale of tangible personal property to the customer, none of the tire disposal fee charged by the dealer is taxable. When a person purchases a tire from a dealer and is required to pay the \$2.00 "disposal" fee whether or not an old tire is left for disposal, then the entire amount is taxable when no tire is left for disposal, and \$1.75 is taxable when a tire is left for disposal (the \$0.25 fee imposed under the California Tire Recycling Act

should be separately itemized). If instead the purchaser is required to pay the \$2.00 fee only when leaving a tire for disposal, then none of the charge is taxable.

I hope you find that this letter clarifies my previous letter (rather than making things more confusing or causing you and your members any inconvenience). If you have further questions, please contact me.

Sincerely,

David H. Levine
Supervising Staff Counsel

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cc: --- District Administrator