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February 20, 1996

Mr. D--- B. F---
Manager, Multistate Tax Services
C--- & L--- ---,
XXX --- ---, Suite XXXX
---, CA XXXXX-XXXX

Dear Mr. F---:

This is in response to your letter of December 28, 1995 in which you inquire of the application of sales tax to hazardous waste disposable fees billed to customers as well as tire-break fees charged to customers. In your letter you state:

“Hazardous Waste Disposal Fees Billed to Customers

“Associated with its automobile dismantling operation, our client is required to pay fees for disposal of hazardous or toxic wastes such as fluids withdrawn from wrecked automobiles and soil contaminated by oil or coolant leaks and spills. A substantial portion of the fees results from this disposal of contaminated soil. Since automotive repair dealers are permitted to charge customers for costs associated with the handling, management and disposal of toxic wastes or hazardous substances under California and federal law, our client passes on its costs as separately stated fees on invoices to its customers.

“The amounts of fees passed on to customers are calculated as an allocation of the total of such fees paid by our client within a given period of time. Each customer is charged approximately fifty to sixty cents irrespective of the type of property purchased or the dollar amount of any purchase.

“We note that Sales and Use Tax Annotation 295.1244 (8/24/92) and its back-up letter from Mr. Glenn Bystrom provide that sales tax does not apply to hazardous waste disposal costs passed through to customers by automotive repair dealers.

Our question with respect to this issue, then, is: Will our client's automobile dismantling locations be considered automotive repair dealers so that the pass-through of hazardous waste disposal fees may be excluded from the measure of tax in accordance with Mr. Bystrom's letter and annotation 295.1244?

"Tire-Break Fees Charged to Customers"

"Our second question involves fees charged to customers for removing used tires from the rims. When a customer selects and wishes to purchase a tire which is mounted on the original wheel, our client's procedure is to bill the customer a few dollars for the removal of the tire from the wheel. The customer pays for this service before the wheel is removed. The customer then has the option to pay for the tire or not. We understand our client's procedure generally destroys the rim so it can no longer be used or resold.

"Are the separately stated fees for removing used tires from their rims includable in the gross receipts from the retail sales of the used tires? If so, would the answer be different if the client's procedures were changed so that title clearly passed to the tires and rims prior to separating them, with separation at the option of the customers after the purchase?"

As you know, section 6051 of the Revenue and Taxation Code imposes sales tax on retailers for the privilege of selling tangible personal property retail. The measure of tax is the gross receipts from the retail sales in this state of tangible personal property. "Gross receipts" means the total amount of the sale price of the retail sale of retailers without any deduction on account of the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (Rev. & Tax. Code § 6012(a)(2).) Neither the sales nor the use tax applies to charges for services not constituting sales of tangible personal property. (Sales and Use Tax Reg. 1501.)

You have correctly stated that sales tax does not apply to certain toxic waste disposal costs passed to the customers by automotive repair dealers. (Business Taxes Law Guide Annot. 295.1244, 8/24/92.) The logic behind that annotation is that the fees represent a labor (service) cost passed on to the customer for the repair of that person's automobile which is specifically attributable to that repair. As noted in the annotation, such an amount is in the nature of a charge for sublet labor. The charge is for disposal of the customer's waste. The situation you present is substantially different from that contained in the annotation. In this case, the charges are not for fees that are incurred because of repairs of customer's vehicles; instead, they are a general fee incurred as a cost of doing business. As you noted, the dismantler pays fees for disposal of fluids it withdraws from wrecked vehicles and for contaminating soil. Hence, such charges passed on to your client's customers are includable in your client's gross receipts subject to sales tax.

The separately stated charges for removing used tires from their rims which tires are then sold to the customers are charges for a service which is part of the sale of the tangible personal property, i.e. the tire. In that case, the tire removal fee is taxable. On the other hand, if the customer pays the fee and rejects the tire, then that fee constitutes a charge for a nontaxable service. Lastly, if title to the tire and wheel is passed to the customer prior their separation and the separation is truly optional, the charge for the separation of the tire from the wheel is not subject to tax as the separation of the tire from the wheel is a service performed on the customer's property.

I trust that this response satisfies your inquiry. If you have any further questions, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Staff Counsel

AIP:cl

cc: --- District Administrator