

**STATE BOARD OF EQUALIZATION**

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February 25, 1994

REDACTED TEXT

BURTON W. OLIVER  
*Executive Director*

Re: Application of Sales Tax to Purchase of Trailer

Dear REDACTED TEXT:

This is in response to your letter of December 20, 1993 in which you request advice as to the application of tax to your purchase of a "fifth wheel trailer". As stated in your letter, you had originally purchased a trailer in September 1992. That trailer turned out to be defective and after numerous attempts to fix the problems, the dealer agreed to replace the trailer. The sale contract indicates that the old defective trailer was "traded-in" for a new trailer with a sale price of \$18,105.00 plus \$35.00 document fees. The dealer gave you \$9,400 as the trade-in value of the old trailer towards the price of the replacement trailer and you paid an additional \$1,925.55. The manufacturer was to pay the remaining balance of \$8,705.<sup>1</sup>

Initially, I note that sales tax is a tax imposed upon the retailer, and not upon the purchaser, of tangible personal property sold at retail in this state. (Rev. & Tax. Code § 6051.) The retailer may collect sales tax reimbursement from the purchaser if the parties' contract so provides. (Civil Code § 1656.1) This sales tax reimbursement is usually designated as "sales tax" on the contract documents. Thus, the amount you paid designated as "sales tax" was actually sales tax reimbursement which you paid to the dealer to reimburse it for the sales tax it owed on the sale.

Regulation 1654 (copy enclosed) addresses merchandise traded in. Subdivision (b) of Regulation 1654 states:

"When merchandise is 'traded in' on the purchase price of other merchandise, the retailer accepting the trade-in must include in the measure of tax the amount agreed upon between the seller and buyer as the allowance for the merchandise traded in."

The only basis for which the sale price of the second vehicle would not be fully subject to sales tax would be if the manufacturer provided an allowance or credit on account of the defective condition of the first trailer. This is explained in subdivision (b) of Regulation 1655 (copy enclosed) which states:

<sup>1</sup> Your total contract price was \$20,030.55. This figure is derived from the sales price of \$18,140 plus sales tax (\$1496.55) and registration (\$394.00).

"Amounts credited or refunded by sellers to consumers on account of defects in merchandise sold may be excluded from the amount on which tax is computed. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the 'trade-in' value must be included in the measure of tax. "

In your letter, you state that the manufacturer had made attempts to fix the problems under warranty but was unable to do so. I assume that the manufacturer was paying the balance due on the replacement trailer in order to fulfill its warranty obligations for the defects in the first trailer. That additional allowance or credit is not included in the measure of tax.

Since the manufacturer contributed to the purchase of the second vehicle due to defects in the first, the measure of tax on the sale of the second vehicle is the total sale price of the second trailer less any amount that the manufacturer paid on account of the defective condition of the first trailer. Thus, the tax actually due on the sale of the second trailer is measured by \$9,435.00 (the trade-in plus the document fees.)

From the contract, it appears that you were charged sales tax based upon the entire selling price (\$18,140.00, which is the charge for the vehicle plus the document fees), including the portion that the manufacturer was to contribute. You, therefore, paid excess reimbursement to the seller. However, you cannot directly file a claim for refund. As noted earlier, the seller is the person obligated to pay the sales tax. The person who must file a claim for refund is the person who actually paid the sales tax. In this case, the dealer paid the sales tax and is the person who must file the claim for any refund. We suggest that you discuss this matter with REDACTED TEXT. If it believes it is entitled to a refund (which it in turn would refund to you), it should file a claim for refund with documentation showing that the manufacturer paid the balance due on account of the defects in the first trailer. The claim should be sent to the address above, to the attention of the Refunds Unit.

If you have any further questions, please do not hesitate to write again.

Sincerely,

Sukjwinder K. Dhanda  
Staff Counsel

SKD:plh

Enclosures – Regulations 1654 and 1655