

To : Mr. Harold W. Wright
bill@goldenstatefire.com

Date : July 8, 2009

From : Robert Prasad
Associate Tax Auditor, MIC: 44

Reference : F09-06-137 - 0622 - 0708

Subject : Transportation Charges and Fixed-Price Contracts

SR KH 28-860770

Thank you for your recent e-mail requesting our advice regarding the proper application of the California Sales & Use Tax Law.

As a preliminary matter, section 6596, "Excusable Delay-Reliance on Advice," of the California Sales and Use Tax Law grant taxpayers relief from future liabilities if the underreported tax is based on incorrect written advice provided by a Board representative. However, without specific details regarding the transactions in question, I cannot provide you with a specific opinion. The answer given is intended to provide general information regarding the application of tax based on the information you have provided and will not serve for relief of liability under section 6596.

For your general information, the Revenue and Taxation Code provides that sales tax is imposed on the gross receipts from the retail sales of tangible personal property in this state. The sales tax is imposed upon the retailer for the privilege of selling tangible personal property at retail in California. The use tax is complementary (and mutually exclusive) to the sales tax and is imposed upon the storage, use, or other consumption in this state of tangible personal property, not subject to the sales tax. The obligation to pay the use tax is on the consumer.

[Regulation 1628, Transportation Charges](#), subdivision (a) provides in pertinent part, that in the case of a sale, whether by lease or otherwise, tax does not apply to "separately stated" charges for transportation of property from the retailer's place of business or other point from which shipment is made "directly to the purchaser," provided the transportation is by other than facilities of the retailer, i.e., by United States mail, independent contract or common carrier. The place where the sale occurs, i.e., title passes to the customer or the lease begins, is immaterial, except when the property is sold for a delivered price or the transportation is by facilities of the retailer, as explained in (b) below. The amount of transportation charges excluded from the measure of tax shall not exceed the cost of the transportation to the retailer.

However, as explained in subdivision (b)(2) of Regulation 1628, when transportation is by facilities of the retailer or sold for a delivered price, tax applies to charges for transportation to the purchaser, unless (A) the transportation charges are separately stated, (B) are for

transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, and (C) the transportation occurs after the sale of the property is made to the purchaser. When the sale occurs before the transportation to the purchaser commences, the tax does not apply to separately stated charges for the transportation. The amount that may be excluded from the measure of the tax cannot exceed a reasonable charge for transportation by facilities of the retailer or the cost of transportation by other than facilities of the retailer.

Regulation 1628 further provides in subdivision (b)(3)(D) in pertinent part that unless explicitly agreed that title is to pass at a prior time, the sale occurs at the time and place at which the retailer completes his performance with reference to the physical delivery of the property, even though a document of title is to be delivered at a different time or place. When delivery of the property is by facilities of the retailer, title passes when the property is delivered to the purchaser at the destination unless there is an explicit written agreement executed prior to the delivery that title is to pass at some other time.

The following Sales and Use Tax Annotations provide additional guidance:

*557.0160 **Facilities of the Retailer.** A company hauling goods sold by it at retail is not acting as a common carrier and, where title to the goods is found to have passed at point of delivery to the consumer, charges for transportation by the facilities of the retailer are not exempt. However, under section 6012(c)(7), charges for transportation by independent haulers after July 1, 1964 may be excluded from the measure of the tax. 9/29/64.*

*557.0445 **Passage of Title—Delivery by Facilities of Retailer.** To clarify subdivision (b)(2) of Sales and Use Tax Regulation 1628, if the taxpayer has a statement on the sales invoices that title to the goods passes prior to transportation, the Board considers this to be proof that there was an explicit agreement under section 2401 of the Commercial Code that title did pass prior to shipment. 6/12/96.*

*557.0449 **Passage of Title—Facilities of Retailer.** If a taxpayer has a statement on the sales invoices that title to the goods passes prior to transportation, the Board will consider this to be proof that there was an explicit oral agreement entered into prior to the sale. 8/13/87; 7/10/96.*

Annotations, which are published in the Business Taxes Law Guide, are summaries of conclusions reached by staff counsel as applied to specific factual situations. They are a research tool and intended to provide guidance regarding the interpretation of Board statutes and regulations. Annotations are not regulations of the Board and do not have the force or effect of law. In any instance where there is an inconsistency between the statutory law and an annotation, statutory law is controlling.

Based on the above citations, separately stated charges for transportation charges by an independent or common carrier are exempt from tax up to the actual amount of the expense to the retailer. When delivery of taxable property is by means of the retailer's vehicles, tax applies

to the delivery charges unless there is a definitive written agreement in place prior to delivery that title to the property passes at some time other than when the property is delivered to the purchaser at the final destination. As noted in the above annotations, this can be accomplished by placing a statement on your sales invoice that title to the property passes to your customer prior to transportation. However, if title to the property does not pass to your customer until the product reaches the final destination, then the charge for delivery by your own vehicle is subject to sales tax.

For your information, [Publication 100, Shipping and Delivery Charges](#), contains a chart which explains the application of tax to delivery charges in relatively simple terms.

In regards to a contract entered into prior to a decrease in tax rate the following citation is provided for reference.

[Regulation 1700, Reimbursement for Sales Tax](#), states when an amount represented by a person to a customer as constituting reimbursement for sales tax is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid is excess tax reimbursement. Excess tax reimbursement is charged when reimbursement is computed on a transaction which is not subject to tax, when reimbursement is computed on an amount in excess of the amount subject to tax, when reimbursement is computed using a tax rate higher than the rate imposed by law, and when mathematical or clerical errors result in an overstatement of the reimbursement on a billing.

Whenever the board ascertains that a person has collected excess tax reimbursement, the person will be afforded an opportunity to refund the excess collections to the customers from whom they were collected. In the event of failure or refusal of the person to make such refunds, the board will make a determination against the person for the amount of the excess tax reimbursement collected and not previously paid to the state, plus applicable interest and penalty.

A sale occurs at the point in time in which title or possession of goods is transferred to the customer. If the contract calls for an excess amount of tax than what is due at the time of sale the retailer is said to have collected excess tax reimbursement. The retailer has the option at that point to either refund the customer the amount of excess tax collected or remit the amount to the Board.

To assist with sales and use tax return filing, the Board of Equalization offers a free, web-based, electronic filing service. It is easy to use and will provide an online record of all of your returns. To learn more and to register for BOE-file, please visit our [Sales and Use Tax E-File Information Center](#).

I hope this information is helpful. If you have any further questions regarding this or any other issue, please write or call our Taxpayer Information Section at (800) 400-7115. You may also visit our website at www.boe.ca.gov.

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-----Original Message-----

From: bill@goldenstatefire.com [<mailto:bill@goldenstatefire.com>]
Sent: Monday, June 22, 2009 7:30 PM
To: EAD-CSPD Web Requests
Subject: SUTD Query

Title: Mr.
First Name: Harold
Middle Initial: W
Last Name: Wright
Email Address: bill@goldenstatefire.com
Mailing Address: 1237 Doker Drive
City: Modesto
Zip/Postal Code: 95351
State: Cal
County/Province: Stanislaus
Country: USA
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Account Number: 28-860770

Comments: Our business name is Golden State Fire Apparatus, Inc. and we sell fire trucks that are manufactured in the State of Wisconsin. We have two (2) questions for you today. We sell these trucks to towns, cities, special districts and the State of California. These trucks are sold with a written contract between the purchaser and the manufacturer. Many finance people in these cities, towns, etc. say that they do not have to pay sales tax on the cost to deliver the apparatus from our Wisconsin factory to their delivery destination within the State of California. Can you confirm to us that if the purchaser requires within the contract that we deliver the apparatus to California that this charge should be taxable please. Second question: Let's say that we sell a fire truck to a California City on a fixed contract in March of 2011 and the fixed contract price includes the additional temporary 1% sales tax. Effective July 1, 2011 the temporary 1% sales tax expires. !

The vehicle is then delivered to California in late December 2011. The vehicle will not be registered by us with DMV for the purchaser until January of 2012. Because the temporary 1% sales tax has expired prior to the vehicle being registered with DMV do we charge the sales tax with the additional 1% temporary tax or do we revert to charging the sales tax amount after the temporary 1% sales tax has expired? Thanks for responding to our two (2) questions. Bill

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