

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

Date : May 6, 2009

From : Robert Prasad
Associate Tax Auditor, MIC: 44

Reference : F09-04-035 - 0403 - 0506

Subject : Taxable Selling Price

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.

Sales and use tax law section 6011 defines "**Sales price**" as:

(a) The total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (1) The cost of the property sold.
- (2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.
- (3) The cost of transportation of the property, except as excluded by other provisions of this section.

(b) The total amount for which the property is sold or leased or rented includes all of the following:

- (1) Any services that are a part of the sale.
- (2) Any amount for which credit is given to the purchaser by the seller.
- (3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

The following annotation refers to the application of tax as it applies to performance bonds:

Sales and Use Tax Annotation 490.0630 **Performance Bonds.** A taxpayer manufactures and sells fire trucks. Some buyers require the taxpayer to obtain performance bonds in order to assure that the trucks perform to specification. The bond is in the taxpayer's name. The cost of the bond is passed on the buyers as a separate charge on the invoice.

Since the bond is not required by the taxpayer as a condition of the sale, the charge is regarded as a charge for an optional warranty. The charge passed on to the buyers is not subject to tax. 2/23/95.

Where a contract is entered into for the sale of tangible personal property, all services related to the sale of the property are considered to be part of the taxable selling price of the property whether the charge for the service is a separately stated charge or included in a lump-sum charge for the property sold. In the case described below, the contract entered into is for the purchase of a fire truck, a sale of tangible personal property. Any service that is related to the sale of the fire truck is considered to be part of the taxable selling price of the truck, even if the charge is separately stated and/or prior to delivery of the truck.

In conclusion, charges for inspection trips are services related to the sale of the truck and are taxable. The annotation above clearly states that the charge of a performance bond is not taxable, as it is regarded as a charge for an optional warranty.

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: Friday, April 03, 2009 2:15 PM

To: EAD-CSPD Web Requests

Subject: Public Query

Title: Mr.
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Comments: Our business name is Golden State Fire Apparatus, Inc. and we sell fire trucks that are manufactured in Wisconsin. 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 don't have to pay sales tax on items like performance bonds or for inspection trips where we have to send fire department representatives to our factory to observe the construction of these fire trucks. We have always been told in the past by BOE that the customer "cannot selectively" choose what they pay tax on and what they don't. The meaning here is that either the total contract is taxed or nothing is taxed. We are looking for either a letter from BOE or a reference in the law that says the total contract gets taxed and the customer cannot determine what they want to pay tax on and what they don't pay taxes on within the contract. Your help would be greatly appreciated.
Bill