STATE OF CALIFORNIA

295.1665

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 324-2637
FAX: (916) 323-3387

January 31, 1996

C--- & L--- L---
XXX --- Avenue South
--- --- Building
Suite XXXX
---, Minnesota XXXXX-XXXX

Re: Unidentified Taxpayer;
Referral Fees

Dear C--- & L---:

This is in response to your letter dated November 27, 1995 regarding the application of tax on referral service fees imposed by your client on the repair and replacement of automobile glass.

You state:

> "The company provides automotive glass repair and replacement services through a national network of affiliated subcontractors and company owned stores. The company also has a reservations division. A customer needing glass services calls a toll-free number which connects the customer with the company's reservations unit in Florida. The reservations unit generally refers the customer to one of the company's repair shops or affiliated repair shops in the customer's home area.
>
> "If the repair work is performed by a subcontractor or company store to whom the reservations unit referred the customer, the reservations unit receives a percentage of the repair invoice as a referral fee. Upon completion of the project, the repair shop issues a pro forma invoice to the company for the price of the automotive glass, installation kit and labor, plus filing the sales tax returns and remitting the sales tax invoiced to and collected from the company to the appropriate state revenue department.

> "After the home office of the company receives the pro-forma invoice from the repair shop, the company invoices a referral service fee by increasing the materials and labor components of the repair shop's invoice by a pre-determined percentage or amount. The total of the glass shop invoice plus the company's referral service fee mark-up is then re-invoiced by the company to the insurance or leasing company. The sales tax invoice by the glass shop is also added to the total and passed on to the insurance or leasing company. The invoice that the insurance company receives for reimbursement to the company shows amounts for parts, labor, and tax but the referral service fee is not broken out. The company does not add additional sales tax to its invoice based on its mark-up for the referral service fee."

You ask two questions based on the above facts. For purposes of clarity, we have separately responded to each of these questions below.

> "(1) Is the transaction being treated correctly for California sales and use tax purposes?"

The transactions you describe raise issues as to the application of tax to the referral fee imposed by your client as well as who is responsible to collect and report any applicable tax to this Board. Each of these issues is discussed below.

a. Referral Fees

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A sale means any transfer of title or possession of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) In the absence of an agreement to the contrary, title to property passes no later than the time when a seller completes its responsibilities with respect to physical delivery of the property. (Cal. U. Com. Code § 2401.) When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use, or other consumption of property in California. (Rev. & Tax. Code §§ 6201, 6401.) Taxable gross receipts or sales price include all amounts received with respect to the sale, with no deduction for the cost of the materials, service or expense of the retailer passed on to the purchaser unless there is a specific statutory exclusion. (Rev. & Tax. Code §§ 6011, 6012.)

We understand that your client contracts with its California customers to provide automotive glass replacement from its reservations unit in Florida. These repairs (and the parts and materials sold in performing the repairs) are completed inside this state by repair facilities under contract with, or owned by, your client. These repair facilities are therefore providing

tangible personal property to your client's customers inside this state on your client's behalf upon completion of the repairs. Under these facts, your client is regarded as selling tangible personal property to its customers in California such that tax applies to these sales unless an exemption or exclusion from the measure of gross receipts applies.

The exclusion relevant to your client is the one set forth in Revenue and Taxation Code sections 6011(c)(3) and 6012(c)(3). These provisions and the rules applicable to repairs generally are explained in Regulation 1546 as follows:

> "(a) Charges for labor or services used in installing or applying the property sold are excluded from the measure of the tax. Such labor and services do not include the fabrication of property in place.
>
> "(b)(1) If the retail value of the parts and materials furnished in connection with repair work is more than 10 percent of the total charge, or if the repairman makes a separate charge for such property, the repairman is the retailer and tax applies to the fair retail selling price of the property. (Fn. omitted.)
>
> "If the retail value of the property is more than 10 percent of the total charge, the repairman must segregate on the invoices to his customers and in his records the fair retail selling price of the parts and materials from the charges for labor of repair, installation, or other services performed. (Fn. omitted.) 'Total charge' means the aggregate of the retail value of the parts and materials furnished or consumed in making the repairs, charges for installation, and charges for labor of repair or other services performed in making the repairs, including charges for in-plant or on-location handling, disassembly and reassembly. It does not include pick-up or delivery charges.
>
> "If the retailer does not make a segregation, the retail selling price of the parts and materials will be determined by the board based on information available to it.
>
> "(2) If the retail value of the parts and materials furnished in connection with the repair work is 10 percent or less of the total charge, as defined in (b)(1) above, and if no separate charge is made for such property, the repairman is the consumer of the property, and tax applies to the sale of the property to him. (Fn. omitted.)
>
> "...."

We understand from your letter that your client and its subcontractors separately state the selling price of parts and materials from the charges for labor on their respective invoices regardless of the value of parts and materials furnished in connection with the repair work. As

such, tax only applies to the sale of the parts and materials used in performing the glass repairs. The remaining issue is whether your client's referral fee is considered part of the sale of the parts and therefore subject to tax.

Your client directly contracts with the end customer for windshield replacement and provides that customer with a billing invoice for the repairs. This invoice consists of separate charges for materials and labor performed by the repair facility which are each marked-up by your client pursuant to a predetermined percentage or amount to cover your client's referral fee. In this situation, tax applies as set forth in Business Taxes Law Guide Annotation 315.0320 (3/30/51):

> "Sales tax does not apply to the full charge for repair services even though the retailer subcontracts the repairs. The tax will apply only to the charge for materials and parts furnished in connection with the repair. The retailer, in turn, can give the repairman who actually performs the repair service a resale certificate to cover the sale of the repair parts by the repairman to him."

Thus, tax applies only to those amounts charged by your client for the sale of parts and materials to its customers and not to the amounts allocated by your client as charges for labor. The "mark-up" on the parts representing a portion of your client's referral fee is part of the amount subject to tax. That is, the taxable gross receipts from the sale of parts pursuant to Regulation 1546 includes the mark-up amount your client adds to these parts as a portion of its referral fee. This means that if your client's repair facility or subcontractor invoices your client $100 for parts and $50 in labor on a single repair and your client charges its customer $150 parts and $75 labor on that same repair, tax applies only to your client's charge of $150 for parts. Where the repairs are performed by a subcontractor and not a facility owned by your client, your client should provide the subcontractor with a resale certificate to cover the sale of the parts by the subcontractor to your client. (See Rev. & Tax. Code § 6007; Reg. 1668.)

b. Collection of Tax

Your client is making retail sales of tangible personal property inside this state when its subcontractors or own repair facilities furnish parts and materials to its California customers. (See Rev. & Tax. Code § 6203(b); Reg. 1620(a)(2); see also Rev. & Tax.Code §§ 6006(a), 6010.5; Cal. U. Com. Code § 2401.) Tax applies to the gross receipts from the retail sale of these parts as set forth above. This tax is imposed on the retailer of the parts who may collect tax reimbursement from the customer if the contract of sale so provides. (See Rev. & Tax. Code § 6051; Civ. Code § 1656.1.) As a retail seller of parts inside this state, your client must register with this Board. (Rev. & Tax. Code § 6066.) The Board office closest to your out-of-state client is:

California State Board of Equalization
9800 Northwest Freeway
Brookhollow Two, Suite 204
Houston, Texas
(713) 681-1106

"(2) Do the tax consequences differ if the work is performed by an independent subcontractor versus a shop that is part of the same corporate entity as the company and its referral service division?"

Your client is regarded as a retailer engaged in business inside this state whether the repairs are performed by an independent contractor or by a shop that is part of the same corporate entity as the referral service division. Under either scenario, your client is regarded as selling tangible personal property to its customers in performing its automotive glass repair. Tax applies to its sales of parts and materials used in effectuating the repairs as discussed in our response to question one above.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:rz

cc: Out-of-State District Administrator - OH