

**M e m o r a n d u m****315.0207.150****To:** Mr. J. W. Cornelius, Supervisor  
Audit Evaluation and Planning**Date:** February 21, 1997**From:** Warren Astleford  
Tax Counsel**Subject:** S--- C--- P---  
Account No. SY -- XX-XXXXXX

This is in response to your January 16, 1997 memorandum to Mr. David Levine asking how tax applies on lump sum charges made by a body and paint shop for miscellaneous materials both installed and consumed in the course of performing repair work.

You provide the following summary of the taxpayer's operations:

“[T]he taxpayer purchases materials which are not installed during repair operations and pays sales tax reimbursement on the purchase thereof. The taxpayer includes a miscellaneous materials charge on customer invoices for such materials and collects tax thereon. The miscellaneous materials charge is based on an hourly labor rate and represents the use of rented shop rags, small amounts of lubricants, adhesives, paper products, abrasives, cleaners, masking tape, masking paper, and other materials during repairs. In a telephone conversation with a member of my staff, Mr. T--- M--- further explained that certain items such as lubricants, adhesives, and nuts and bolts, are installed on trucks during repair operations and included in the miscellaneous materials charge. The taxpayer purchases the lubricants, adhesives, and nuts and bolts for resale.”

Discussion

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless an exemption otherwise applies. (Rev. & Tax. Code § 6051.) 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 consumption of property inside this state. (Rev. & Tax. Code §§ 6201, 6401.) A person performing repairs is the retailer of parts and materials furnished with the repair where the retail value of the parts and materials is more than ten

percent of the total charge, or where the repairer makes a separate charge for the property. (Reg 1546(b)(1).) A repairer is the consumer of such property where the retail value of the parts and materials is ten percent or less of the total charge and no separate charge is made for the property. (*Id.*)

We understand that the taxpayer makes a separate charge for parts and materials on customer invoices as part of its truck repair services. Pursuant to Regulation 1546, tax applies on the retail value of the parts and materials it furnishes to its customers. The key to this case, however, is determining whether (and what) the taxpayer actually sells to its customer and what (if anything) the taxpayer consumes in the course of providing its repairs. The taxpayer must report and pay sales tax on its sales of parts and materials to customers. A charge that is not for the sale of tangible personal property is not subject to tax. If the taxpayer consumes any parts and materials in performing repairs rather than selling them, sales tax applies on the sale of that property to the taxpayer or use tax applies on the purchase price of such property. The taxpayer is collecting excess tax reimbursement to the extent it collects an amount as "sales tax" for materials that it consumes in the course of providing repairs or does not otherwise sell to its customers. (See Reg. 1700.)

As relevant here, a sale contemplates the transfer of title or possession to tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) Title to tangible personal property passes no later than the time a taxpayer completes its responsibilities with respect to physical delivery of that property. (Cal. U. Com. Code § 2401.) Under the taxpayer's circumstances, a sale occurs when it transfers physical possession of tangible personal property which was separately itemized on that customer's repair invoice. The transfer of possession of this property probably occurs at the time a customer picks up its vehicle after completion of the repairs by the taxpayer.

The taxpayer appears to transfer possession to only some of the tangible personal property listed above. Items such as lubricants, adhesives, nuts and bolts which are actually installed on to a customer's vehicle are sold to that customer since physical possession of these items is transferred to the customer and the taxpayer separately itemizes its charges for these items. Tax applies on the sale of these items and the taxpayer may purchase this property for resale. (The taxpayer may alternately take a tax-paid purchases resold deduction pursuant to Regulation 1701 where it previously paid tax or tax reimbursement when purchasing the property it resells to its customers.) Physical possession to the remaining items such as shop rags, paper products, abrasives, cleaners, masking tape and paper does not appear to be transferred to the customer. These items are instead used (and not sold) by the taxpayer in performing the repairs and body work provided there is no provision in the taxpayer's invoice passing title to these items to the customer prior to any use. (We assume there is no such title passage clause in the taxpayer's invoices for purposes of this opinion.) The taxpayer must self-report use tax on these items if tax was not reported and paid to the Board on the sale of these items to the taxpayer.

Based on the above analysis, we agree with your conclusion that the taxpayer may only collect sales tax reimbursement on that portion of its charge which represents the sale of parts and materials actually installed on repaired trucks. A portion of Annotation 315.0030 (5/26/77) is consistent with this position:

“Items purchased and used by the body shops such as masking tape, thinner and the like are not regarded by the Board as items sold by the repairer and, accordingly, the repair shop should not charge tax to its customers. As a consumer of such materials, the body shop is guilty of a misdemeanor under the Sales and Use Tax Law when ‘tax’ or ‘tax reimbursement’ is charged to the customers. Such charges will be regarded as excess tax reimbursement and will have to be refunded to the customers or they will be retained by the Board.

“....”

If you have any further questions, please write again.

WLA:rz