



STATE BOARD OF EQUALIZATION

916-324-3828

October 19, 1990

X-----

Dear X-----,

Confirming our telephone conversation of September 25, 1990, Mr. Gary Jugum, Assistant Chief Counsel, Business Taxes, has referred your letter of September 4, 1990, to me for response. You want to know if the purchase of parts for repairing handicapped accessibility equipment on vehicles is exempt as well as the initial purchase and installation.

I. FACTUAL BACKGROUND

During our telephone conversation, you indicated that the City of X----- had previously purchased transit vehicles (busses and mini-vans) which have been modified for handicapped access. The busses came with the modifications as original equipment but the mini-vans were modified subsequent to purchase. The city is now buying parts to repair the equipment.

II. OPINION

California Sales and Use Tax Law imposes a tax on the gross receipts of retailers from the retail sale of tangible personal property in this state unless such sale is otherwise exempt or excluded from taxation by statute (Rev. & Tax. Code § 6051). Revenue and Taxation Code Section 6369.4 exempts from tax the gross receipts from the sale "of items and materials when used to modify a vehicle for physically handicapped persons."

18 California Code of Regulations, Regulation 1591(1), "Medicines and Medical Supplies, Devices and Appliances," which interprets and applies the Code, provides as follows:

"...tax does not apply to the sale, storage, use or other consumption, in this state of items and materials when used to modify a vehicle for physically handicapped persons which are necessary to enable the vehicle to be used to transport a physically handicapped person or persons. Tax does not apply whether the property is installed by the retailer or

is sold for installation by other persons. The exemption does not extend to tools and supplies used in modifying the vehicle and not incorporated into, attached to, or installed on the vehicle.”

(Tax regulations are Board rulings which have the force and effect of law.)

“Vehicles” qualifying under the section mean and include vehicles, such as busses, used in the public transport of physically handicapped persons. (Reg. 1591(1)(3).)

The general rule is that purchases of parts to repair an item of tangible personal property are not exempt from sales or use tax, even where the original purchase of the item was exempt, unless the statute providing the exemption covers repair as well as purchase. (See, e.g., National Aircraft Leasing, Ltd. v. State Bd. of Equalization (1979) 90 Cal.App.3d 549 153 Cal.Rptr. 4007.) In this case, while the statute does not expressly refer to “repairs,” both the statute and the regulation exempt the purchase of “items and materials when used” to modify a bus or van. We conclude that this language is broad enough to cover repairs since repair parts are “items and materials” and once installed, are “used” to modify the vehicle for transportation of physically handicapped persons. Additionally, any charges that the city may incur for labor to have these parts installed by outside repairmen rather than city employees is excluded from sales tax. (§ 6012(c)(3), Reg. 1546(a).)

I hope this discussion answers your question. If you need anything further, please do not hesitate to write again.

Very truly yours,

John L. Waid
Tax Counsel

JLW:sr