



STATE BOARD OF EQUALIZATION

LEGAL DIVISION - MIC 82
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Executive Director

May 10, 1995

Mr. J--- L---
A--- C---
XXX --- Highway, Suite -XX
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. L---:

This is in response to your letter received by us on March 15, 1995 regarding the application of tax on automobiles shipped overseas. You state:

“I am a licensed auto dealer wanting to export new 95 autos overseas. The new car franchised dealer is required by the factory to collect tax and license on all vehicles sold wholesale or retail. I am not able to purchase this vehicle in the name of my business due to factory restrictions so I have to register the vehicle in my own name.”

You ask:

“If the vehicle is picked up at the new car franchise dealer by a PCC licensed trucking company and taken directly to the port and loaded on a boat, can I later request and receive a refund on the tax money with all proper documentation i.e., trucking receipt and Bill of Lading from shipping company. Please let me know if the names on the bill of lading make a difference or not or whether it goes only to the id number of the car exported I would also like to know if I request a refund from the new car franchised dealer and am denied, can I be guaranteed (with proper paperwork) a refund from the state?”

Discussion

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.) 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 in California. (Rev. & Tax. Code § 6201, 6401.)

We understand from your letter that you are purchasing vehicles inside this state for the purpose of reselling them to customers outside the country.¹ You state that the franchised dealer will not allow you to purchase these vehicles on an extax basis. That is, the dealer is treating its transactions with you as taxable sales and is collecting tax reimbursement from you measured by its gross receipts from each sale.

You ask if you can file a claim for refund with this Board for the amount of tax reimbursement you pay to the dealer. As set forth above, California's sales tax is imposed on the retailer. (Rev. & Tax. Code § 6051.) An amount paid by the purchaser to the retailer to reimburse the retailer for that sales tax is a matter of contract between the retailer and the purchaser. (Civ. Code § 1656.1.) That is, an amount paid to the retailer by the purchaser itemized as "sales tax" is not, in fact, sales tax imposed by the state on the purchaser. The purchaser has no standing to file a claim for refund with the Board for such amounts since the purchaser made no payments of sales tax to the Board. Instead, the retailer is the only person who may file a claim for refund of sales taxes which the retailer believes it overpaid. When a retailer has collected reimbursement for sales tax the retailer claims it overpaid to the Board, the Board will not grant a refund unless the retailer refunds any such reimbursement to the purchaser. (Rev. & Tax. Code § 6901.5; Reg. 1700(b)(2).) In your situation, only the new car dealer (and not you) may make a claim for refund of taxes to this Board.

Based on the foregoing, the dealer may file a claim for refund if its sale of a vehicle to you was not a sale at retail. A "retail sale" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (Rev. & Tax. Code § 6007.) If the dealer can establish that you did not use the vehicle prior to reselling it to a third party, the dealer may be entitled to a refund of the sales tax it paid to this Board on its sale to you even if it did not accept a resale certificate from your company.

¹ We assume that you or your company will not use these vehicles inside this state prior to reselling them to your overseas customers.

The dealer also may file a claim for refund if its sale of a vehicle to you was not subject to tax pursuant to the exemption set forth in Revenue and Taxation Code section 6396. That provision exempts sales in this state from sales tax when goods are shipped outside the state under specific conditions. These conditions are explained in Regulation 1620(a)(3)(B) as follows:

“Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

1. Facilities operated by the retailer, or
2. Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term ‘carrier’ means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term ‘forwarding agent’ means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a ‘carrier’ or ‘forwarding agent’ within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state”

This means that if the dealer can establish that it actually shipped the vehicle outside the state or directly to a carrier, customs broker, or forwarding agent for out-of-state shipment pursuant to a contract of sale with you and neither you nor your agent obtained possession of the vehicle inside California, the dealer may be entitled to a refund of the sales tax it paid to this Board.

The only other provision relevant to your situation is the tax-paid purchases resold deduction explained in Regulation 1701 (copy enclosed). This provision prevents the imposition of two California taxes on a series of transactions when only one of the transactions is regarded as a retail sale under California law. That is, if a person pays tax or tax reimbursement when purchasing property and then resells that property prior to any use, that person may take a deduction **against that person’s California tax liability on the resale of the property**. The only claim for refund authorized in connection with this deduction is when a person does not take a tax-paid purchases resold deduction in the proper quarter. Such refund would be of the taxes that person paid that would have been offset by the taking of the deduction in the proper quarter. If the person does not resell the property in a transaction subject to California sales or use tax, there is no tax liability against which to take the deduction. This means that if you paid sales tax reimbursement when you purchased a vehicle and then resold that vehicle outside this state such that California sales or use tax would not apply, the tax-paid purchases resold

Mr. J--- L---

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deduction (or related refund) is not available to you.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

Enclosure - Reg. 1701

cc: --- --- District Administrator - --