

**STATE BOARD OF EQUALIZATION**

(916) 327-3400

March 10, 1992

Ms. D--- B---
P--- S--- Ltd.
P. O. Box XXXX
---, CA XXXXX-XXXX

Re: SR -- XX-XXXXXX

Dear Ms. B---:

I am writing in response to your February 17, 1992 request for legal advice regarding the applicability of California sales and use tax to a transaction of your client, M--- M--- (MM). The facts, as outlined in your letter, are as follows.

A Sacramento resident purchased, from an Arizona dealer, a boat manufactured by C--- Inc. of Wisconsin. After the purchase, the buyer discovered a crack in the boat. C--- agreed to have the crack repaired under the buyer's warranty. The boat was taken to M--- M--- for repairs. MM sent C--- an estimate for repairs that included California sales tax reimbursement. C--- sent MM a copy of its Wisconsin sellers permit with a statement that "the repairs were exempt from sales tax." You have asked for clarification regarding this issue.

Sales and Use Tax Regulation 1655(c) (enclosed) provides, in relevant part, that the sale of replacement parts and materials furnished under a mandatory warranty or pursuant to a mandatory manufacturer's warranty is not taxable. Such tax is considered to be "included" (albeit after the fact) with the tax paid on the retail selling price of the property. Assuming that the crack was repaired under C---'s warranty (included as a [mandatory] provision of the contract of sale), there is no tax owing on the purchase of parts either by MM or by C---. These would be non-taxable sales for resale. The end user, however, pays use tax on the boat at the time it is registered with DMV.

Please note that if my assumption is incorrect and the warranty is "optional" rather than "mandatory", C--- would be considered the consumer of the parts and materials and would be required to pay tax on its purchases from MM.

Ms. D--- B---

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Please feel free to contact us again if you have further questions.

Sincerely

Stella Levy
Tax Counsel

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Enclosure: Reg. 1655