STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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March 19, 1973

E--- L. B---
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--- ---, California XXXXX

Attention: Mr. G--- E. P---
License Agent

Dear Mr. P---:

From reading your letter of March 1 and talking to you on March 9, we understand that you are interested in receiving clarification concerning the sale and delivery of truck tractors and trailers under the circumstances related below. We note that the purchase contracts require that the vehicles will be delivered by the seller outside the state and will not carry any payload from this state. We also understand that your questions do not involve Section 6388.

In regard to taking delivery of a truck tractor outside this state from a California dealer, your questions are:

> "1. After the vehicle has been delivered out of state by a bonified [sic], transporter, is the dealer required to produce evidence to the exemption of use tax, or is this the responsibility of the buyer?"

Section 6247 basically provides that it shall be presumed that tangible personal property delivered outside this state to a purchaser that is a resident of California was purchased for use and storage in California and therefore subject to tax. This presumption may be controverted by a statement in writing signed by the purchaser that the property was not purchased for use in California. Upon receipt of such a statement, the retailer is relieved from the obligation of collecting the use tax. Failure to receive and retain such a statement puts the burden of proof on the retailer to show that the property was not purchased for use in California. In regard as to who is a resident, see Garrett Corp. v. State board of Equalization, 189 Cal. App. 2d 504. There is no such presumption regarding purchase by nonresidents.

> "2. If the use tax is the responsibility of the buyer, then we can assume that the dealer only has to show delivery out of state by a transporter bill of lading for the sales tax exemption."

The retailer should not only retain the bill of lading but should also retain the signed certificate from the purchaser regarding nonuse in the State of California.

> "3. If the tractor is delivered out of state to the buyer from the dealer and is used in interstate commerce immediately and is brought back into California under pay load, does this complete the exemption for sales and use tax or are there other qualifications to be met?"

Where tangible personal property is purchased outside California, used initially outside this state but brought to California and thereafter used in multi-state operations, a principal use test is made to determine if the property was purchased for use in California. The property is "principally used" in California if it is brought to this state within 90 days of the date of purchase and stored, used or otherwise consumed over one-half the time during the six-month period after the date of returning to California. (See Western Pacific Railroad v. State Board of Equalization, 213 Cal. App. 2d 20.) When it is determined that the property was purchased for use in California, tax is due from the purchaser measured by the sales price unless otherwise exempt. The only possible exemption that comes immediately to mind is set forth in Regulation 1620(b)(1), copy enclosed. This provision simply states that if the property is purchased for use in interstate or foreign commerce prior to its entry into this state, and thereafter used continuously (6 months after re-entry into California) in interstate or foreign commerce, it will not be subject to California use tax. As a general rule of thumb we use a 6-month test in determining whether the property is continuously use in interstate commerce. Accordingly, if the vehicle is used during the first 6 months after re-entry into California continuously in interstate commerce, it will normally not be subject to California use tax.

> "4. After entering the interstate fleet, can this vehicle be used for both interstate and intrastate trips? If so, up to what percentage can the intrastate trips be? If not, what time period must elapse before the tractor can be used to haul intrastate trips?"

As related in No. 3 above, the vehicle must be used continuously in interstate commerce during the six months after re-entry. Continuously refers to the fact that at least a portion of the payload being carried is an interstate load. After the six-month period, the vehicle has established its status regarding its tax liability. Thereafter, whether the loads it carries are interstate or intrastate makes no difference. If the unit is later resold the question regarding the taxability of the resale must then be determined.

On trailers, the questions are:

> "1. Can delivery be taken out of state and put into an interstate fleet and used in interstate commerce like a tractor and be exempt from tax or not?"

> "2. After entering the interstate fleet, can this vehicle be used for both interstate and intrastate trips?" If so, up to what percentage can the intrastate trips

be? If not, what time period must elapse before the trailer can be used to haul intrastate trips?"

"3. If the trailer is delivered out of state to the buyer from the dealer and is used in interstate commerce immediately and is brought back into California under pay load, does this complete the exemption for sales and use tax or are there other qualifications to be met?"

Except for question No. 4 below, the discussion relating to tractors are equally applicable to trailers.

"4. Under Sales and Use Tax Law (Article 6388) see History and Note. Note subtitle (b) Used exclusively in interstate commerce. Does this mean used exclusively by an interstate carrier involved in both interstate commerce and intrastate or only in interstate commerce? If it has to be used in interstate commerce only, is there a time limit it has to be used before it can haul an intrastate load? Or can it haul a certain percentage of intrastate load and if so what percentage?

Section 6388 and the history note are not applicable to the situation you described since the problem involves deliveries out of state. You will note Section 6388 deals the situation where the delivery is made in California. This same philosophy is applicable to the history note and the amendment effective July 1, 1971. However, for discussion let us assume that the new truck trailer was sold and delivered by the manufacturer in California. The statement in (b) of the "Note" effective July 1, 1971 regarding "exclusively used in interstate commerce" means just that. The property is not to be used during the first six months following delivery for any other purpose than carrying interstate loads. Mixed loads will not suffice.

Very truly yours,

Glenn L. Rigby
Tax Counsel

Enclosure