

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

August 18, 1986

Mr. B--- R---, C.P.A.
XXXXX --- Blvd., Suite XXX
---, CA XXXXX

Dear Mr. R---:

This is in response to your letter dated April 30, 1986, which states:

I represent an auto broker who provides prizes (autos) for various T.V. game shows.

We are requesting a ruling regarding the collection of sales tax based on the following facts and circumstances.

Contestant wins an auto on game show. Our company supplies a car to the game show by billing the game show for the car but never transferring title to the game show. Contestant decides to take cash in lieu of prize. Therefore, title to the auto has never transferred. We pay the cash to the contestant and not the game show.

To illustrate, say a contestant wins an auto with a suggested value of \$20,000, excluding tax and license. However, the contestant opts for cash and we pay him \$17,000 in cash. We billed and collected \$20,000 from the game show. The auto never "changed hands." Do we collect sales tax? If so, on the \$17,000 or \$20,000?

For purposes of discussion, I assume that an auto sold to the game show for \$20,000 would be sold to any other of your clients for \$20,000. That is, I assume that no discount is given to the game show as consideration for promotional time given your products on the game show. I further assume that your use of the term "broker" does not mean that you act merely as a middleman; this opinion is based on your actually holding title to or having the power to transfer title of subject autos. If any assumption made herein is incorrect and you have further questions, you should write us with a detailed description of the subject transaction. A copy of any contract related to the transaction would also assist our analysis.

Discussion

California Sales and Use Tax Law imposes upon retailers a tax on the sale at retail of tangible personal property in this state, as measured by a retailer's gross receipts. (Revenue & Taxation Code § 6051) (all references to sections are to this Code unless specified otherwise.)

"Sale" includes "[a]ny transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. 'Transfer of possession' includes only transactions found by the board to be in lieu of a transfer of title, exchange or barter." (§6006(a).) "[S]ale at retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property." (§6007.) "Retailer" includes sellers who make any sale at retail. (§6015; see also §6014 (definition of a "seller").

A game show is the consumer of an auto awarded to a contestant due to chance or skill because the game show does not resell it, but rather consumes it by giving it away. (§6007, Reg. 1670(e); see also Business Taxes Law Guide Annotations 280.0300, 280.0320, 280.0840.) Thus, if you sell the game show an auto actually awarded to a contestant, the full sales price (\$20,000 for the example in your letter had the auto been accepted by the contestant) is included in your gross receipts upon which the sales tax is measured. (§§6007, 6011, 6012, 6051.)

In the example in your letter, you do not state whether possession of the auto would actually be transferred to the game show prior to the auto's acceptance by a winning contestant. If not, no sale has occurred because neither possession nor title to the auto is transferred to the game show, and therefore no sales tax is due. (§§6006, 6051.)

If, in your example, you do transfer possession of the auto to the game show, we would consider that transfer of possession to be a sale for sales tax purposes. (§6006(a); see also Commercial Code § 2401(1) (any retention by seller of title in goods delivered to buyer is limited in effect to a reservation of security interest).) Therefore, the full sale price, \$20,000, must be included in your gross receipts upon which the sales tax is measured. (§6012(a).) However, upon the auto's return, had you refunded in cash or credit the entire sales price (\$20,000) together with any sales tax reimbursement paid you by the game show, and such refund was not conditioned on purchasing property at a price greater than the amount charged for the returned auto, you would be entitled to exclude the refunded \$20,000 from your taxable gross receipts. (§ 6012(c)(2); see also Reg. 1655 (a copy of which is enclosed).)

You also ask whether you should collect sales tax on the proper measure of tax (\$20,000 in your example). Whether you collect sales tax reimbursement from the game show depends solely upon the terms of your contract of sale (Civ. Code § 1656.1; see also Reg. 1700 (a copy of which is enclosed).)

Mr. B--- R---, C.P.A.

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August 18, 1986
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Should you have further questions, do not hesitate to write us again.

Sincerely,

David H. Levine
Tax Counsel

DHL:ss

Enc.