

M e m o r a n d u m**295.1302.500**

To : Mr. David H. Levine
Acting Assistant Chief Counsel

Date: March 21, 2000

From : Janice L. Thurston
Senior Tax Counsel

Subject: California Tire Recycling Act

This is in response to your request regarding the application of tax on the fees imposed on tire purchasers pursuant to AB 2108, enacted in 1996. You specifically ask whether AB 2108 alters the application of tax on the \$0.25 per tire disposal fee as set forth in Annotation 295.1302 (1/27/95) and whether the ten percent (10%) amount retained by the retailer collecting this fee is part of that retailer's taxable gross receipts.

The Legislature originally adopted the California Tire Recycling Act in 1990 as set forth in Public Resources Code section 42860 et seq. The original section 42885(a) imposed a \$0.25 per tire disposal fee on every person who *leaves* a tire for disposal with a seller of new or used tires. The seller was required to collect the fee and remit it to the state, but may retain ten percent (10%) of the fee as reimbursement for any costs associated with the collection of the fee. (Pub. Resources Code § 42885(a).) We concluded that the \$0.25 fee collected by the tire vendor for tire disposal was not part of the vendor's taxable gross receipts since the \$0.25 tire recycling fee was imposed by statute on the purchaser and not on the tire vendor. (BTLG Annot. 295.1302 (1/27/95).)

AB 2108 amended Public Resources Code section 42885 effective January 1, 1997 and provided that the \$0.25 per tire fee is imposed on every person who *purchases* a new tire from a retail seller of new tires. The seller is required to collect this fee at the time of sale, may retain 10 percent of the fee as reimbursement for costs, and must remit the remainder to the state on a quarterly basis. Subsection (c) of Public Resources Code section 42885 defines a "new tire" and excludes from the definition, retreaded or recycled tires, or tires that are mounted on wheels and sold as part of a vehicle or equipment.¹

¹ Subsection (c) states:

"For purposes of this section, 'new tire' means a pneumatic or solid tire intended for use with on-road or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motor vehicle, motorized equipment, construction

The provisions of AB 2108 continue to impose the \$0.25 recycling fee on the purchaser (and not the retailer) of the new tire. Since the \$0.25 recycling fee is imposed on the purchaser by statute and not on the tire retailer, the \$0.25 fee is not a part of the retailer's taxable gross receipts or sales price from the sale of tangible personal property even though the fee is now imposed when the sale of a new tire occurs. However, any charges for tire disposal or recycling in excess of \$0.25 mandated by the retailer and made as a condition of the sale of a new tire are part of that retailer's cost of doing business and are included in the retailer's taxable gross receipts. If the customers have the option of leaving the old tire for disposal and incur an optional disposal fee, or to take the tires with them and not incur the fee, the optional disposal fee is not subject to sales or use tax.

The first paragraph of Annotation 295.1302 should be revised to reflect that the fee is now imposed on every person who purchases a new tire. Furthermore, the second example contained in Annotation 295.1302 (1/27/95) is no longer accurate for the newly amended provisions. That example provides that "when a person purchases a tire from a dealer and is required to pay a \$2.00 'disposal' fee whether or not an old tire is left for disposal, the entire amount is taxable when no tire is left for disposal, and \$1.75 is taxable when a tire is left for disposal"

By copy of this memorandum to Leila Khabbaz, I suggest that Annotation 295.1302 be revised to reflect these changes to the California Tire Recycling Act.

"Tire Disposal Fee. The California Tire Recycling Act, as amended, imposes a \$0.25 per tire disposal fee on every person who purchases a new tire from a retail seller of new tires. The seller is required to collect the fee and remit it to the state, but may retain 10% of the fee as reimbursement for any cost associated with the collection of the fee. (Pub. Resources Code § 42885 (a).)

"Prior to January 1, 1997, the California Tire Recycling Act imposed the \$0.25 per tire disposal fee on every person that left a tire for disposal with the seller of new or used tires. Where a tire dealer sold a new tire and charged \$2.00 for tire disposal as a condition of that sale, the entire \$2.00 charge was subject to tax except for that portion of the fee actually imposed on the customer for tire disposal. That is, the entire \$2.00 was taxable if a customer did not leave a tire for disposal. If a customer left a tire for disposal, \$1.75 of the disposal fee was subject to tax and the remaining \$0.25 amount was a non-taxable fee imposed by the state directly on the customer."

"The amended provisions of the Act impose the \$0.25 fee directly on the purchaser of a new tire whether or not an old tire is left for disposal. Thus, whether or not an old tire is left for disposal, the retailer of a new tire collects the

equipment, or farm equipment. 'New tire' does not include retreaded or recycled tires or tires that are mounted on wheels and sold as part of a vehicle or equipment."

\$0.25 fee from its customer as a fee imposed on that customer by the state. That \$0.25 is not taxable. Any amount charged in excess of the \$0.25 as a condition of the sale of a new tire is subject to tax (\$1.75 in the above example).

“None of the tire disposal fee charged by a tire dealer who simply disposes of a tire for a customer without selling a new tire is subject to tax because under such circumstances the charge relates entirely to the disposal of the old tire. Furthermore, the customers have the option of leaving the old tire for disposal and incurring an optional disposal fee, or of taking the tire with them and not incurring the fee, the optional disposal fee is not subject to sales or use tax.”

JLT/cmm

cc: Mr. Vic Anderson (MIC:40)
Ms. Leila Khabbaz (MIC:40)