



STATE BOARD OF EQUALIZATION

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July 25, 1995

BURTON W. OLIVER
Executive Director

Mr. G--- T. D---
M--- P---
P.O. Box XXX
---, California XXXXX

RE: SR -- XX-XXXXXXX1
Services as Part of Sale

Dear Mr. D---:

I am responding to your letter to the Legal Division dated June 15, 1995. You state that you perform various services as part of your operation and ask about the application of sales tax to them. You have particular questions about three parts of your business: vapor recovery; fuel delivery to customers; and fuel brokerage operations.

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) The total amount of the sale price includes any services that are a part of the sale. (§ 6012(b)(1).)

"It shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale" (§ 6091.) The retailer owes the sales tax but may collect sales tax reimbursement from the purchaser pursuant to agreement. (Civ. Code § 1656.1.)

B. Tax Consequences.

1. Vapor Recovery.

You describe this operation as follows:

"The first area of concern is Vapor Recovery. This a mandatory function of all service stations. It is our contention that this is a service to our customer. Our customer comes to our place of Business with a Tank full of Gasoline Vapor which is introduced in our Vapor Recovery system. This system includes Special nozzle, Hoses, Piping and a Vapor Processor."

(Emphasis in original.)

We assume from your description that you are talking about the Vapor Recovery System which gasoline stations are required by Health and Safety Code Sections 41950 et. seq. to install. You are apparently asking why the Certification Fee mandated by Health and Safety Code Section 41961 (and other associated fees, if any) must be included in your taxable gross receipts. These are costs of doing business just as are your rent and utility bills. Under the above authority, they may not be excluded from gross receipts. The only items which gas stations may routinely exclude from gross receipts are federal excise taxes on the sale of gasoline and Motor Vehicle Fuel License Tax. (§ 6012(a)(4).)

2. Fuel Delivery Charges. You state that you deliver gasoline and diesel fuel to some of your customers and provide pumping services at the site. You ask if these transportation charges can be excluded from gross receipts. We assume that, while the customer orders from you a certain amount of gas/fuel to be delivered to the customer's location, you deliver it in your own trucks and you actually sell it at the site as measured by the actual amount pumped. Consequently, your transportation charges are specifically included in your gross receipts. (§ 6012(c)(7); Reg. 1628(b)(2). Sales and Use Tax Regulations are issued by the Board to aid in the enforcement and administration of the Sales and Use Tax Law and have the force and effect of law.)

3. Brokerage Fees. You state that you maintain a fuel broker's license and that customers negotiate with you to buy a truck and trailer load of fuel, and you indicate that you also arrange for the delivery of the fuel via common carrier or the supplier's trucks. We thus assume that you operate as a trading house for customers and suppliers and so buy and sell the fuel on your own account. We have previously determined that, under this scenario, brokerage fees are costs of doing business and are included in gross receipts under the above authority. (See, e.g. Annot. 550.0050. (5/13/92) Sales and Use Tax Annotations are excepts from previous Board staff opinion letters and serve as guides to Staff positions.)

Mr. G--- T. D---

-3-

July 25, 1995
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Please note that our conclusions are based in part on the assumptions we have drawn from the facts you supplied. Errors in those assumptions can affect our conclusions.

For your information, I have included a copy of Regulation 1628. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Senior Tax Counsel

JLW:sr

Enclosure: Reg. 1628

cc: --- District Administrator - --