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**STATE BOARD OF EQUALIZATION**

Anno. 460.0012 - deleted because it is a duplicate of Anno. 315.0030

May 26, 1977

Dear --. ---:

This is in response to your letter of May 18, 1977.

As we understand the situation, body shop and repair operators are beginning to charge their customers a flat fee for supplies "rated" to the job. Usually such fees are more related to the operator's own formula than to the actual value of the supplies used. The operator uses this relatively new policy to avoid paying the sales tax to -----, i.e., the sellers of the supplies. These supplies are items such as sandpaper, paint thinner, etc.

I have set forth your questions and numbered my answers to correspond with them.

"1) In the sale by our wholesalers to their shop customers of supplies such as paint thinner, abrasives, and masking tape, the Board holds that the purchaser is the consumer (since these products do not become a component part of the vehicle painted), and that the sales tax must be paid at this point of sale by the consumer.

Question: If the shop operator gives the wholesaler a resale certificate on which he specifically lists thinner, abrasives, and masking tapes are exempt items upon which the shop operator will collect and pay the sales tax, is the wholesaler relieved of his responsibility?"

Answer 1: As you pointed out, the answer to your question involves the presence of good faith. However, as recognized in Regulation 1 668(c), if a purchaser who has a valid seller's permit insists that he is purchasing for resale, property of a kind not normally resold in his business, and makes such a statement on the resale certificate, we would have no alternative but to accept the resale certificate as taken in good faith and the seller would then be exempt from the imposition of sales tax. The purchaser who gave the certificate would be liable for the use tax if in fact he used the items rather than resold them.

"2) The increasing trend by body and repair dealers to charge set fees for supplies to their customers, in our judgment, gets into an area described as the 'doctrine of unjust enrichment'. ----- often counsel their customers on sound business practices, so if there is anything unlawful in charging set fees for supplies, we'd like to be able to so advise our customers. In this instance, we have questions on which we'd appreciate your comments:

A) In its audits of body and repair shops, does the Board now accept and approve sales tax reimbursement based on set fees for job suppliers?

B) Does the shop operator who charges such fees expose himself to fines and/or penalties upon Board audit?

C) If a shop charges such set fees for supplies, does this exempt his purchases of those supplies from our Members?"

Answer 2: Items used by the body shops such as masking tape, thinner and the like are not regarded by the Board of Equalization as items sold by the repairer and accordingly, he should not charge tax to his customers. As the consumer of such materials he is guilty of a misdemeanor under the sales and use tax law when he charges his customers "tax" or "tax reimbursement". Such charges will be regarded as excess tax reimbursement and will have to be refunded to his customers or they will be retained by the Board.

In addition, the purchaser will still be liable for use tax measured by the purchase price of those items he purchased from ----- under a resale certificate and used on his job. In such cases, he would be responsible for the payment of use tax directly to the Board without any offset for the amount of tax reimbursement he collected from his customers.

As you can see, such a collection by the seller can get quite costly. Also if a particular individual continues to collect excess tax reimbursement, the Board has the authority to revoke his seller's permit after hearing as explained in Regulation 1700(c)(B).

Very truly yours,

Glenn L. Rigby  
Tax Counsel

GLR:po