



**STATE BOARD OF EQUALIZATION**

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May 20, 1996

E. L. Sorensen, Jr.  
*Executive Director*

Mr. P--- E. N---  
S--- and U--- T--- A--- of  
C---, Incorporated  
XXXX XXth Street, #XXX  
---, California XXXXX

Re: Unidentified Taxpayer

Dear Mr. N---:

This is in response to your April 12, 1996 letter to Assistant Chief Counsel Gary J. Jugum regarding the application of tax on parts used in various repair operations.

You state:

“The client is an in-state consumer of repair parts and the vendor is an out-of-state manufacturer/retailer. After a sale is made, the vendor provides repair services on the products. The billings for these repair services are on a time and material basis....

“The vendor keeps the repair parts at its out-of-state plant. The repair parts are sent to California by one of two methods: 1) repair parts which break somewhat frequently are sent by the out-of-state vendor to its in-state field service employees prior to knowing who the ultimate customer is; 2) repair parts which break infrequently are sent by the out-of-state vendor to its in-state field service employees only after an initial field visit to the ultimate customer.

“In both of these methods of delivery, the field service employee personally hand carries the repair part to the customer’s location at the time the repair is made.”

You ask whether this transaction is subject to sales tax or whether your client should self report use tax on this property on its sales and use tax return. For purposes of this opinion, we assume that the vendor separately states its charges for the parts it provides in performing its repairs (see Reg. 1546(b)(1)) and that it is not performing the repairs pursuant to an optional or mandatory warranty/maintenance agreement (see Regs. 1546(b)(3), 1655(c)).

### Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) This tax is imposed on the retailer who may collect reimbursement from its customer where the contract of sale so provides. (Civ. Code § 1656.1; Reg. 1700.) When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use, or other consumption of property in California. (Rev. & Tax. Code §§ 6201, 6401.) This tax is imposed on the person actually storing, using, or otherwise consuming the property. (Rev. & Tax. Code § 6202.) A retailer engaged in business inside this state is required to collect this tax from its customers and remit it to this Board. (Rev. & Tax. Code §§ 6202, 6203.) Taxable gross receipts or sales price include all amounts received with respect to the sale, with no deduction for the cost of the materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code §§ 6011, 6012.)

A sale of tangible personal property takes place where the property is physically located at the time title is transferred for consideration. (See Rev. & Tax. Code §§ 6006, 6010.5; Cal. U. Com. Code § 2401.) Title to property generally passes no later than the time when the seller completes its responsibilities with respect to physical delivery of the property. (Cal. U. Com. Code § 2401.) In this case, the vendor completes its responsibilities with respect to physical delivery of the parts when its in-state field employees provide the part (and repaired item) to your client inside this state. This means that the vendor is making a retail sale of property inside this state. Sales tax applies to this transaction if the order for, or the delivery of, the part is made by any local branch, office, outlet or other place of business of the vendor inside this state, or by any agent or representative of that vendor operating out of or having any connection with such local branch, office, outlet or other place of business. (Reg. 1620(a)(2)(A).) Where there is no such participation by the vendor or its agent/representative as set forth above, use tax applies to the transaction. (See Reg. 1620(a)(2)(B).) Your client is required to self report any applicable use tax unless the vendor is a retailer engaged in business inside this state. (Rev. & Tax. Code §§ 202, 6203.)

Your letter does not indicate whether there is any in-state participation by the vendor in the transaction. Thus, the application of sales or use tax to the facts of your letter cannot be determined. If, however, the vendor meets the requirements of Regulation 1620(a)(2)(A), sales tax applies on the sale of the repair part. Where there is no local participation by the vendor in the transaction and your client has not paid use tax to the vendor (assuming the vendor is a

Mr. P--- E. N---

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retailer engaged in business inside this state), your client must self report use tax on the parts furnished as part of the repair.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford  
Staff Counsel

WLA:rz

cc: --- District Administrator - (--)