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CA Tire Fee Retail Purchaser – Lift Crane Services and Rental

A general engineering company that provides lift crane services and rentals to California customers must self-report and pay the California Tire Fee to the Board on "new tires," as defined (Pub. Resources Code, §42885, subd. (g)), that are mounted on a support fleet vehicle or lift fleet crane the company purchases from an out-of-state vendor for use in California. Unless the company can show that it paid the tire fee to the vendor at the time of purchase, the provisions of Sales and Use Tax Regulation 1620, subdivision (b)(3)–(5), regarding vehicles and other property purchased for use in this state, will be applied, by analogy, to determine whether the support fleet vehicle or lift fleet crane on which the new tires were mounted was purchased for use in this state and, accordingly, whether the tire fee is due. 3/27/08; 7/3/08; 8/25/08.



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PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
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www.boe.ca.gov

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August 25, 2008

RAMON J. HIRSIG
Executive Director

(Redacted) Esq.
(Redacted)
(Redacted) L.P.
(Redacted)

Re: (Redacted) L.P.
California Tire Fee Account No. (Redacted)
Assignment No.: 08-301

Dear Mr. (Redacted):

Because the tire fee and use tax are similarly imposed on the purchasers and consumers of the property in question, we previously advised you that we would look to the use tax's 90-day rule, pursuant to California Code of Regulations, title 18, section (Regulation) 1620, subdivision (b)(3), for guidance regarding imposition of the tire fee on new tires mounted on vehicles and equipment that Company purchases outside California. (See our letter of July 3, 2008) You have asked if the "six-month test" that is also set forth in Regulation 1620, subdivision (b)(3), would also be applicable. To confirm our conversation, yes, the "six-month test" is also applicable to determining if the tire fee is due on tires mounted on vehicles and equipment that Company purchases out-of-state. In other words, if Company owes use tax on vehicles and equipment it purchases, then it will also owe the tire fee on new tires mounted on such vehicles and equipment. For your convenience, I have enclosed a copy of Regulation 1620.

(Redacted), Esq.
August 25, 2008
Page 2 of 2

Again, I apologize for any confusion or distress our previous communications may have caused, and I hope that I have responded to all of your concerns. Thank you for your patience and courtesy. Please do not hesitate to contact me if you have any further questions.

Sincerely,

Carolee D. Johnstone
Tax Counsel III (Specialist)

CDJ:ef

Attachment: Regulation 1620

cc (without attachment):

Mickie Stuckey (MIC: 57)
Julia Findley (MIC: 57)
Susan Sinetos (MIC: 57)
Andrei G. Shkidt (MIC: 57)
Louise Bertoni (MIC: 88)
Barry Ivy (MIC: 88)
Kristine Cazadd (MIC: 83)
Randy Ferris (MIC: 82)
Bob Lambert (MIC: 82)
Bruce Emard (MIC: 82)
Elliot Block (California Integrated Waste Management Board)



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**THE DISCUSSION ENTITLED "TIRE FEE LIABILITY ACCRUED
PRIOR TO EMERGENCE FROM BANKRUPTCY" CONTAINED
HEREIN (pp. 1-4) WAS WITHDRAWN BY LETTER 10/1/08.
THE REMAINDER OF THE OPINION IS VALID.**

July 3, 2008

RAMON J. HIRSIG

Executive Director

(Redacted), Esq.

(Redacted)

(Redacted), L.P.

(Redacted)

Re: Tax Opinion Request 08-188
(Redacted) L.P.
Sales and Use Tax Account No. (Redacted)

Dear Mr. (Redacted):

This letter is in response to your request for further consideration of two aspects of the advice provided to (Redacted), L.P. (Company) in my letter of March 27, 2008.

Tire fee Liability Accrued Prior to Emergence from Bankruptcy, January 28, 2005

"WITHDRAWN"

Liability for Fee on Equipment Purchased for Use in California

As noted in my March 27, 2008, letter, the Fee is imposed on the retail purchaser of a new tire (PRC, § 42885, subd. (b)(1)) and, as a retail buyer or purchaser, we assumed that, with respect to new tires attached to vehicles and cranes Company purchased, Company paid the Fee to the retail vehicle or crane dealer on any new tires attached to support fleet vehicles and lift fleet cranes that Company purchased in California, just as we assume Company paid the sales tax reimbursement to the California retailer. We also assumed that Company paid the appropriate use tax when Company purchased vehicles and cranes from out-of-state retailers for use in California, either to the out-of-state retailer or

(Redacted), Esq.

July 3, 2008

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to the state (e.g., the California Department of Motor Vehicles). However, we could not assume that Company paid the Fee on new tires that were attached to vehicles and cranes that Company purchased from out-of-state retailers, and it was likely that Company did not pay the Fee on those tires. Accordingly, as the retail purchaser on whom the Fee is imposed, the Company would have an outstanding liability for the Fee on those new tires for which the out-of-state retailer did not collect the Fee.

You have pointed out that we neglected to define what purchased “for use in California” might mean, and I apologize for any confusion this omission may have caused. You explain that vehicles and equipment may be purchased outside California but may move within and without California during the normal course of Company’s coast-to-coast business. You ask, when is a tire no longer a “new tire” for purposes of the Fee, and you note that there is a “90-day rule” with respect to use tax on vehicles purchased outside California.

At the time the Fee was enacted by the Legislature, section 6248 of the Revenue and Taxation Code ¹ provided that “there shall be a rebuttable presumption that any vehicle bought outside of this state which is brought into California within 90 days from the date of its purchase . . . was acquired for storage, use, or other consumption in this state” and is therefore subject to use tax. Since the Fee and use tax are similarly imposed on the consumers of the property in question, by analogy, we find it reasonable to look to the use tax’s 90-day rule for guidance regarding the imposition of the Fee on new tires mounted on the vehicles and equipment that Company purchases outside California.

Accordingly, if the vehicles and cranes at issue on which new tires are mounted are used or stored outside this state for more than 90 days after they were purchased, then the Fee would not apply. However, if California use tax would apply to Company’s purchase of vehicles and equipment, we further conclude that Company would be liable for the Fee with respect to new tires mounted on such property. (See Cal. Code Regs., tit. 18 § 1620, subd. (b).)

You note that you will be sending me additional questions regarding the Fee. In the meantime, if you have any questions about the information provided here, please contact me as shown above.

¹ All future statutory references will be to the Revenue and Taxation Code unless indicated otherwise.

(Redacted), Esq.

July 3, 2008

Page 3 of 3

Sincerely,

Carolee D. Johnstone
Tax Counsel III (Specialist)

CDJ:ef

Attachment: Eastern District Roster of Public Agency Addresses

cc: Mickie Stuckey (MIC: 57)
Julia Findley (MIC: 57)
Susan Sinetos (MIC: 57)
Jeff Koch (MIC: 57)
Andrei G. Shkidt (MIC: 57)
Dan Tokutomi (MIC: 88)
Barry Ivy (MIC: 88)
Patricia Molina (MIC: 88)
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Fourth District, Los Angeles

JOHN CHIANG

State Controller

**THE DISCUSSION ENTITLED "LIABILITY DISCHARGED IN
BANKRUPTCY" CONTAINED HEREIN (PG.5 ET SEQ.) WAS
WITHDRAWN BY LETTER 10/1/08. THE REMAINDER OF THE
OPINION IS VALID.**

March 27, 2008

RAMON J. HIRSIG

Executive Director

(Redacted), Esq.

(Redacted)

(Redacted), L.P.

(Redacted)

Re: Tax Opinion Request 07-602

(Redacted), L.P.

Sales and Use Tax Account No. (Redacted)

Dear Mr. (Redacted):

This letter is in response to your request to the Board of Equalization (Board) for written advice as to whether (redacted), L.P. (Company) is a "retail seller" and required to collect the California tire fee (Fee) under the California Tire Recycling Act (Act), Chapter 17 (commencing with section 42860) of Part 3 of Division 30 of the Public Resources Code (PRC). You also ask, if Company as incurred any Fee liability, whether such liability would have been discharged when Company's Chapter 11 Bankruptcy Plan of Reorganization was confirmed.

According to the information you provided, Company holds a "Class A" contractor's license (general engineering) in California. You state further that Company has provided crane/lifting services to its customers throughout California for many years, utilizing a variety of "support fleet" vehicles and "lift fleet" cranes that are equipped with pneumatic tires. You note that, with respect to the support fleet vehicles, Company is the end user; none of these vehicles is purchased for resale or for bare lease or rental to Company's customers. You also note that there are two types of lift fleet cranes: the truck cranes that are virtually always provided to the customer with an operating crew; and the rough terrain cranes, boom trucks, and carry-deck cranes that are primarily provided to the customer with an

(Redacted), Esq.
March 27, 2008
Page 2 of 4

operating crew but which may also be provided to a customer on a bare rental basis for relatively short periods of time.

Finally, you state, with respect to both the support fleet vehicles and the lift fleet cranes, that Company is a retail buyer, not a wholesale buyer, of these vehicles and cranes, including the attached tires. In addition, you state that Company purchases all replacement tires for these vehicles and cranes from retail tire dealers in California and pays the appropriate tire fee to the retail tire dealer at the time of purchase. For purposes of this discussion, since the time period at issue here goes back eight years, we will assume that Company's operation was, with respect to these facts, the same eight years ago as it is now and remained the same during the intervening years. We also assume, for purposes of this discussion, that, as a retail buyer of the vehicles and cranes and their attached tires, Company paid either sales tax reimbursement to the vehicle or crane retailer, or, if sales tax did not apply, use tax based on the sales price of the vehicle or crane for storage, use, or other consumption of the vehicle or crane in California. (See Civ. Code, § 1656.1; Rev. & Tax. Code, §§ 6051, 6201, 6202, 6401; Cal. Code Regs., tit. 18, § 1700.)

As discussed in detail below, based on the information you have provided and the assumptions we have made, we conclude that Company is and was not a retail seller for purposes of the Act and is and was not required to collect and remit the Fee to the Board. However, since the Fee is imposed on the purchaser of the tire, Company is and was, as a retail purchaser, liable for the Fee on any new tire it purchased unless the Fee was paid to the retailer at the time of purchase. If Company purchased vehicles and cranes for use in California from out-of-state retailers and these retailers did not collect from Company the Fee on the new tires attached to these vehicles and cranes at the time of purchase, then Company is liable for the Fee on those tires.

DISCUSSION

Liability as Retail Seller

As you note, PRC section 42885 provides, in relevant part, that “[a] person who purchases a new tire . . . shall pay a California tire fee,” and “[t]he retail seller shall charge the retail purchaser the amount of the California tire fee” and collect and remit the Fee to the Board. (PRC, § 42885, subd. (b).) First, you have stated and provided invoices to show that Company paid the Fee, as the retail purchaser, on new replacement tires Company purchased in California. Further, you state that Company is a retail buyer, not a wholesale buyer, of the vehicles and cranes it purchases.

Therefore, with respect to the tires attached to these vehicles and cranes, Company is a retail purchaser under the Act and was a retail purchaser when it purchased new tires, whether the tires were

(Redacted), Esq.
March 27, 2008
Page 3 of 4

replacement tires or whether they were attached to vehicles or cranes when they were purchased, regardless of the type of vehicle to which they were attached. Accordingly, we conclude, based on the information provided, that Company was not acting in the capacity of a retail seller under the Act (i.e. not purchasing for resale see Rev. & Tax. Code, § 6007) in any of these transactions and was not required to collect and remit the Fee to the Board, pursuant to PRC section 42885, subdivision (b)(2) & (3).

Liability as Retail Purchaser

However, as noted above, the Fee is imposed on the retail purchaser of a new tire. (PRC, § 42885, subd. (b)(1).) As a retail buyer or purchaser, we assume that, with respect to new tires attached to vehicles and cranes, Company paid the Fee to the retail vehicle or crane dealer on any new tires attached to support fleet vehicles and lift fleet cranes that Company purchased in California, just as we assume Company paid the sales tax reimbursement to the California retailer.

On the other hand, whereas we also assume that Company paid the appropriate use tax when Company purchased vehicles and cranes from out-of-state retailers for use in California, either to the out-of-state retailer or to the state (e.g. the California Department of Motor Vehicles), we cannot assume that Company paid the Fee on new tires that were attached to vehicles and cranes that Company purchased from out-of-state retailers, and it is likely that Company did not pay the Fee on those tires. Accordingly, as the retail purchaser on whom the Fee is imposed, the Company would have an outstanding liability for the Fee on those new tires for which the out-of-state retailer did not collect the Fee.

Liability Discharged in Bankruptcy

“WITHDRAWN”

If you have any questions about the information provided here or would like further assistance regarding any of these matters, please contact me as shown above.

Sincerely,

Carolee D. Johnstone
Tax Counsel III (Specialist)

CDJ:ef

(Redacted), Esq.

March 27, 2008

Page 4 of 4

cc: Mickie Stuckey (MIC: 57)
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