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CA Tire Fee Sale Service Contract

Dealer A agrees to provide new tires and service to various trucking companies and customers of Dealer B. Dealer A bills Dealer B for the tires and services, and Dealer B bills his customers, including all applicable taxes. Dealer B would be considered the retail seller who is subject to the fee. 3/16/98.
(M99-1).



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Third District, San Diego
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Controller, Sacramento

March 16, 1998

Ms. (Redacted)
(Redacted)
(Redacted)

JOHN CHANG
Acting Member
Fourth District, Los Angeles

E.L. SORENSEN, JR.
Executive Director

Re: California Tire Recycling Fee Law: Retail Seller

Dear Ms. (Redacted),

This is in response to your letter dated December 20, 1996, in which you requested a legal opinion relative to the California Tire Recycling Fee (Public Resources Code, Chapter 17, beginning at Section 42860). We apologize for the delay in responding to your request. I am responding to two of three questions raised in your letter. At this time, it is my understanding that a response to your question regarding an exemption for governmental agencies has been provided to you. Because your remaining two questions raise a similar issue, I have provided one response to both questions.

BACKGROUND

You describe two situations in which your company, a commercial tire dealer, has agreed to provide new tires and service to various trucking companies or other persons when requested or arranged by either a tire manufacturer or another commercial tire dealer. In each of these situations your company directly invoices the tire manufacturers or other commercial tire dealers for the product and services. The tire manufacturers and commercial tire dealers are responsible for collecting sales tax reimbursement and remitting the appropriate sales tax to the state. You have described the arrangements with the tire manufacturers and commercial tire dealers as examples of third party billings. You want to know under the California Tire Recycling Fee Law who is responsible for collecting and remitting the \$0.25 new tire fee to the State Board of Equalization.

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ANALYSIS

Section 42885, subdivision (a) of the Public Resources Code provides in part that “[t]he retail seller shall collect the [tire recycling] fee at the time of sale, may retain 10 percent of the fee as reimbursement for any costs associated with the collection of the fee, and shall remit the remainder to the state on a quarterly basis” The California Tire Recycling Fee Law does not provide a definition for the term “retail seller”. However, based on the facts set forth in your letter, the fact that the tire manufacturers and commercial tire dealers who have arranged the sale to their customers, are collecting sales tax reimbursement from the customers and remitting the sales tax on the sales of the tires, is an indication that they are considered the retail seller in the transactions. It is our opinion that it would not be inconsistent under the California Tire Recycling Fee Law to characterize the tire manufacturers and commercial tire dealers as the retail seller required to collect and remit the tire recycling fee to the State Board of Equalization.¹

We hope this information is of assistance to you. For additional information, I have enclosed copies of the State Board of Equalization’s pamphlets “California Tire Recycling Fee Law” and “Tire Recycling Fee.” Please write or call me at the above address and telephone number should you need further information.

Sincerely,

Susan Y. Bennet
Tax Counsel

SYBlm

Enclosures

cc: Mr. Monte Williams
Chief, Excise Taxes Division
MIC: 56

Ms. Mary C. Armstrong
Assistant Chief Counsel
Legal Division

¹ In addition, pursuant to the Fee Collection Procedures Law (Part 30, division 2, Revenue and Taxation Code), Section 55021, in conjunction with Public Resources Code Section 42882, the fee payer must register with the State Board of Equalization

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bcc: Mr. Vic Day, MIC: 56
Ms. Janet Vining
Ms. Judy Nelson
Ms. Monica Brisbane