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**STATE BOARD OF EQUALIZATION**

October 31, 1988

Repair parts - shipments into state and out of state

Dear,

In your August 25, 1988 letter to the State Board of Equalization, you asked for a ruling on whether California sales or use tax would be due in two situations involving the repair of tangible property both in state and out of state. Your questions are quoted below, followed by our responses.

Question

"1. Repairs are made on an item of tangible personal property at a service center outside of your state and then shipped to the customer's location inside your state by common carrier or U.S. Mail. The firm performing the repairs is registered in both states to collect sales & use taxes.

"a.) Is this repair considered a sale in your state?

"b.) If so, is tax due on the entire charge or only on parts?

1. If parts and labor are separately stated?
2. If parts and labor are not separately stated?"

Answer. This repair work would not be considered a sale in California, since the repair work was performed outside of California. However, unless the repairman is the consumer of parts used to perform the repair work, the use tax would apply to the customer's purchase of the repair parts, since the customer purchased the repair parts from the repairman out of state for use in California. (Revenue and Taxation Code Section 6051, 6052). Since the customer would be liable for the use tax on the repair parts, a repairman who is registered in California to collect the use tax would be responsible for collecting the amount due and paying it to the Board. (Sales and Use Tax Regulation 1684 ).

California does not tax repair labor. The tax would be due on parts in accordance with the provisions of Regulation 1546 - Installing, Repairing, Reconditioning In General. Subdivision (b) of that regulation in summary provides that the repairman is the retailer of the parts if the retail value of the parts is more than 10 percent of the total charge, or if

a separate charge is made for the repair parts. If, however, the retail value is 10 percent or less of the total charge and no separate charge is made for the repair parts, the repairman is the consumer of the property. If this latter provision applies, the customer will not be liable for use tax on the purchase of the repair parts since we would regard the out-of-state repairman as the consumer of the items, not the customer.

Question

“Repairs are made on an item of tangible personal property at a service center located in your state and then shipped to the customer's location outside your state by common carrier or U.S. Mail. The firm performing the repairs is registered in both states to collect sales & use taxes.

“a.) Is this repair considered a sale in your state?

“b.) If so, is tax due on the entire charge or only on parts?

1. If parts and labor are separately stated?
2. If parts and labor are not separately stated?”

Answer. Regulation 1546(b) applies in this instance also. If the repairman is the consumer of the parts as described above, then tax applies to the repairman's purchase of the repair parts from his vendors, and not to the sale of those parts to the out-of-state customer. If, however, the repairman is the retailer of the parts, either because the value of the parts exceeds 10 percent of the total charge or because the repairman makes a separate charge for the repair parts, then under the facts you relate the repairman would not be liable for the sales tax because the sale would be a sale in interstate commerce, exempt from the sales tax under the provisions of Revenue and Taxation Code Section 6396 and Sales and Use Tax Regulation 1620 (a) (3) (B), if the repairman is required by the contract of sale to ship the parts out of state and does, in fact, ship the parts out of state.

I enclose for your information copies of Regulations 1546, 1620, and 1684. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott  
Tax Counsel

JA:jb  
Enclosure