

Memorandum

570.1655

To: Mr. Vic Anderson, Supervisor
Audit Support Unit (MIC: 44)

Date: March 7, 2005
REVISED: April 5, 2005

From: Carla J. Caruso
Senior Tax Counsel

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Subject: **R--- - S--- Indian ---
Tribal Tax on Vehicle Sales**

This responds to your memorandum dated June 14, 2004, in which you request a legal opinion on two issues concerning a tribal tax imposed by an Indian tribe in N---. You ask (1) whether the tribal tax charged by M--- B--- of R---, a vehicle dealership, on its vehicle sales to non-Indian California residents on the R--- - S--- Indian ---'s reservation is included in the measure of California use tax due on the California residents' use of the vehicles in this state; and (2) whether a credit against the California use tax for the amount of tribal tax paid should be allowed under Revenue and Taxation Code section 6406. Attached to your memorandum are (1) an unsigned copy of an April 27, 2004, letter from Dan Leddy, Tax Compliance Supervisor, to D--- -. and K--- -. B---, informing them that they are not entitled to credit against their California use tax liability for payment of tribal tax, and that the tribal tax will be included in the measure of use tax owed; (2) an e-mail from attorney R--- -. F--- to Mr. Leddy stating her belief that the tribal tax is allowed as a credit against California use tax liability by virtue of N--- statutes; (3) the copies of N--- Revised Statutes ("NRS") sections 372.800 and 372.805 provided by Ms. F--- to Mr. Leddy.

Your memorandum states that the dealership in question is located on the R--- - S--- Indian ---'s reservation, and regularly makes vehicle sales to California customers. The vehicle purchasers were "charged a tribal tax, identified as a sales tax on the sales contract." The purchasers were informed, evidently by the dealership, that a credit for the tribal tax was allowable under Revenue and Taxation Code section 6406, against the purchasers' California use tax liability.

As referred to by counsel on taxpayers' behalf, NRS section 372.800 provides that the governing body of an Indian colony or reservation "may impose a tax on the privilege of selling

tangible personal property at retail on the reservation or colony.”¹ NRS section 372.805 provides that under specified circumstances, when a tribal tax has been imposed pursuant to NRS section 372.800, the N--- Department of Taxation shall not collect the N--- state tax imposed on the sale of tangible personal property on an Indian reservation or colony.² Counsel believes that when a tribal tax is imposed as described above, the R--- - S--- Indian --- is “ ‘standing in the shoes’ ” of the N--- state government, so that credit for payment of the tribal tax should be allowed against a purchaser’s California use tax liability.

In responding to your questions, we understand and assume that the R--- - S--- Indian --- is a federally recognized Indian tribe (68 Fed. Reg. 68180 (Dec. 5, 2003)), with a reservation located in N---.³ We assume that the vehicle purchasers are not Indians who reside on a reservation. We further assume that the tribal tax imposed by the R--- - S--- Indian --- complies with NRS sections 372.800 and 372.805.

Background

As you know, California sales tax applies to a retailer’s sale of tangible personal property at retail in this state, measured by gross receipts, unless the sale is specifically exempted or excluded by statute. (Rev. & Tax. Code, § 6051.) When sales tax does not apply, California use tax applies to the storage, use or other consumption of tangible personal property purchased from any retailer for storage, use, or other consumption in this state, measured by a percentage of the sales price, unless that use is specifically exempted or excluded by statute. (Rev. & Tax. Code, §§ 6201, 6401.) “Gross receipts” or “sales price” generally include all amounts received with respect to the sale of tangible personal property with no deduction for the costs of the materials used, labor or service costs or other expenses of the retailer, unless there is a specific statutory exclusion. (Rev. & Tax. Code, §§ 6011, 6012.)

¹ NRS section 372.800 provides:

“1. The governing body of an Indian reservation or an Indian colony may impose a tax on the privilege of selling tangible personal property at retail on the reservation or colony.

“2. If a sales tax is imposed, the governing body may establish procedures for collecting the tax from any person authorized to do business on the reservation or colony.”

² NRS section 372.805 provides:

“The department of taxation shall not collect the tax imposed by this chapter on the sale of tangible personal property on an Indian reservation or Indian colony on which a tax has been imposed pursuant to NRS 372.805 if:

“1. The tax is equal to or greater than the tax imposed by this chapter; and

“2. A copy of an approved tribal tax ordinance imposing the tax has been filed with the department of taxation.”

³ We note that the R--- - S--- Indian ---’s website (www. --- .org) states that the Tribe is a federally recognized Indian tribe with a reservation located near R--- and S---, N---.

The basis for a credit against retail sales and use taxes paid in another state is Revenue and Taxation Code section 6406:

“A credit shall be allowed against, but shall not exceed, the taxes imposed on any person by Chapter 3 [state use tax] (commencing with Section 6201) of this part, by any ordinance enacted pursuant to Part 1.5 [local use tax] (commencing with Section 7200), by any ordinance enacted pursuant to Part 1.6 [special district use tax] (commencing with Section 7251), and by any ordinance enacted pursuant to Article 2 (commencing with section 37021) of Part 17 of this division⁴ by reason of the storage, use, or other consumption of tangible personal property in this state to the extent that the person has paid a retail sales or use tax, or reimbursement therefore, imposed with respect to that property by any other state, political subdivision thereof, or the District of Columbia prior to the storage, use, or other consumption of that property in this state....” (Emphasis added.)

In other words, section 6406 specifically requires that a retail sales or use tax must be imposed by a state, or a political subdivision of a state, in order for credit against California use tax to be allowed.

Analysis

Here, the tribal tax is imposed by the R--- - S--- Indian --- (“Tribe”). The Tribe is not a political subdivision of the state of N---, and accordingly, does not impose tax as a political subdivision of the state of N---. Rather, the Tribe imposes tax based upon its retained sovereignty subject to limits imposed by federal law. (See, e.g., *Washington v. Confederated Tribes of the Colville Indian Reservation* (1980) 447 U.S. 134, 152, which states: “The power to tax transactions occurring on trust lands and significantly involving a tribe or its members is a fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implication of their dependent status.”) Thus, payment of the tribal tax does not fulfill the requirements of Revenue and Taxation Code section 6406. Accordingly, taxpayers are not entitled to a credit against their California use tax liability for payment of the tribal tax.

We next address whether the amount of the Tribe’s tax is included in the measure of California use tax due on the California residents’ use of the vehicle in this state. As a starting point, we note that a tribal tax which complies with NRS sections 372.800 and 372.805⁵ is imposed on the retailer for the privilege of selling tangible personal property at retail on the

⁴ Revenue and Taxation Code sections 37021 et seq. (special taxes for rapid transit construction) were repealed in 1976. (Stats. 1976 ch. 1333 § 18.)

⁵ These statutes are set forth in footnotes 1 and 2, *supra*..

reservation. Therefore, the tribal tax paid by the purchasers (identified on the sales contract as sales tax) is in fact reimbursement to the retailer for sales tax that the retailer must pay to the Tribe. The tribal tax is a cost of acquiring the vehicle, and is thus included in the measure of the California use tax. (Rev. and Tax. Code, § 6011(a)(1).) In this regard, we note that the measure of sales or use tax of goods purchased on California Indian reservations also includes the tribal tax, unless the specific requirements for exclusion are met. (Rev. and Tax. Code, §§ 6011(c)(12), 6012(c)(12); see Sales and Use Tax Annot. 305.0025 (2/4/94).)

In conclusion, the vehicle was purchased on an Indian reservation in N--- and the tribal tax (or tax reimbursement) paid by the purchasers is not a sales or use tax imposed by a state, or a political subdivision of a state as required by section 6406 in order for a credit against the California use tax to be allowed. Therefore, the amount of tribal tax is included in the measure of California use tax owed by the non-Indian California residents, who purchased their vehicle for use in this state.

We will provide any further information you require.

CJC:ds

cc: Mr. Jeffrey McGuire (MIC:92)
Mr. Joseph Young (MIC:49)
Mr. Jerry Cornelius (MIC:44)