

## **290.0000 GOODS DAMAGED IN TRANSIT—REGULATION 1629**

*See also Returns, Defects and Replacements.*

290.0020 **Automobiles.** The sales tax applies to a purchase by a carrier of a shipment from outside this state of automobiles which the owner-dealer refused to accept because of damage in transit. The fact that the carrier planned to transport the automobiles out of the state for use in his business outside the state does not affect the taxability of the sale. 10/22/58.

290.0025 **Equipment Badly Damaged in Transit.** A California firm agreed to purchase certain equipment from a California vendor. The vendor ordered the equipment from an out-of-state firm. The invoice from the vendor to the purchaser stated "FOB Vermont." The equipment was badly damaged in shipment and, upon inspection at the carrier's terminal, delivery was refused. The purchaser filed a claim with the carrier, which paid the full amount, less tax.

Title to the equipment was intended to pass to the purchaser at F.O.B. point outside the state and, therefore, the purchase from the California vendor was a use tax transaction. This is supported by the fact that the purchaser, rather than the vendor, filed a claim against the carrier. Accordingly, the use tax does not apply with respect to goods destroyed before the purchaser makes any storage or use of them in this state. Therefore, the purchaser may file a claim for refund of use tax collected from it by the vendor. 3/3/64.

290.0028 **Goods Damaged or Lost in Transit After Retail Sale.** Sales tax otherwise due is not reduced or eliminated when the goods are damaged or lost in transit after the retail sale. "Sale" means any of the events defined in section 6006, including the transfer of title to the goods. If the title to the goods being sold passes from the California seller to the California buyer before the intrastate transportation from the seller to the buyer, and the goods are totally destroyed during the transportation to the buyer, the seller owes the same full amount of the sales tax as if the goods had been received undamaged by the buyer. The buyer still owes the seller for the destroyed goods' price including sales tax reimbursement. That outstanding debt is equivalent to the loss experienced by the buyer. The buyer will expect full compensation from the carrier who was responsible for destroying the buyer's goods. It should be noted that in some circumstances of interstate transportation from an out-of-state seller to a California buyer, the use tax would be applicable rather than the sales tax. In those cases, no use tax would be due if the goods were totally destroyed during the transportation and before any receipt of the goods by the buyer, whether or not the title to the goods had passed to the buyer. 6/24/80.

290.0031 **Goods Damaged in Transit.** A firm purchases two electric motors which are damaged in transit from an out-of-state vendor. The motors are returned to the vendor for repairs. The vendor bills the purchaser for labor and materials on the repair plus the applicable tax. The purchaser then files a claim for the repairs against the freight company.

In this situation, tax is properly included in the claim against the carrier since it is part of the sales price of the materials used in repairing the damaged goods and tax is due on the sales price of the parts. The repair transaction is separate and distinct from the original sale or purchase.

As to goods damaged in transit which are accepted by the purchaser in their damaged condition, the transaction is a use tax transaction (i.e., the sale occurs outside the state). Accordingly, the correct measure of tax on this transaction is the fair retail value of the goods in their damaged condition. It should be noted that the amount of tax paid on materials for the repair is not necessarily equivalent to the goods in their damaged condition. 5/29/64.

290.0040 **Repairs.** Regulation 1629 provides means for determining sales tax on original sale of property which is damaged or destroyed. It does not relate to the applicability of sales tax to charges for repairs on such damaged property. Tax applies to the sale of materials used in such repair work. 3/28/57.

290.0060 **Replacement of Damaged Goods by Carrier.** Where a carrier purchases a replacement part for goods damaged in transit and furnishes such part to the consignee in settlement of a damage claim, it is a taxable retail sale to the carrier. Had the original retailer purchased the part and sold it to the consignee in

fulfillment of its warranty, the sale to such original retailer would have been a sale for resale and the subsequent sale to consignee would have been regarded as included in the original sale as a “replacement.” 3/24/53.

**290.0080 Replacement Parts.** A California concern purchases equipment out of state, which is shipped “freight collect” with risk of loss to be on the purchaser. During shipment certain parts were broken beyond repair. These parts were reordered and billed to purchaser including sales tax.

Assuming title passed to purchaser out-of-state, use tax liability accrues to purchaser. Since part of the shipment was damaged, the tax would be due only on that portion of the total amount paid represented by the fair retail value of the goods in their damaged condition. The replacement parts are properly subject to either sales or use tax. 2/21/55.

**290.0100 Replacement Parts.** Sales of repair parts used in repairing automobiles damaged in shipment where the automobiles are to be resold upon arrival at their ultimate destination, are sales for resale not subject to tax. It is immaterial whether the payment for such parts is made by the carrier or the owner of the automobiles. 9/30/53.

**290.0150 Resale Merchandise.** Resale merchandise shipped by a manufacturer to a retailer via a common carrier is damaged in transit. A credit is issued to the retailer, replacement merchandise is shipped, and a new billing is issued. The manufacturer bills the carrier for the damaged merchandise. The transactions with the retailer do not result in any tax liability because the original sale was nullified by the credit issued and the subsequent sale was a sale for resale. Assuming that the carrier acquires possession of and title to the damaged goods, tax applies to the portion of the amount paid by the carrier representing the fair retail value of the goods in their damaged condition unless the carrier issues a resale certificate and resells the damaged property. If the property is so badly damaged that it must be junked by the carrier, there is no tax on the billing to the carrier as the fair retail value of the damaged goods would be zero. 8/14/78.