



STATE BOARD OF EQUALIZATION

September 27, 1971

S--- - D--- P---, Inc.
XXXX --- Drive
---, CA XXXXX

Attention: Mr. F--- W. M---
Controller

Dear Mr. M---:

SR -- XX XXXXXX

This is in regard to your letter of September 15, 1971 concerning the taxability of two race engines that you purchased from [A---] in ---, Texas, in the early part of 1971.

It is our understanding that these engines were delivered to you in California via a common carrier. Thereafter, you installed one of the engines in your race car and held the other one as a back-up engine, i.e., standby service. Although it was your initial intent that the car and engine be raced in California, these engines were never tested or raced in the State because of the circumstances related below.

After attaching the engine to the auto chassis, you removed both engines from the State of California via a trailer in March of 1971 and raced the car in Phoenix, Arizona on March 26, 1971. After this race the engines were returned to California where they were stored and thereafter on April 27, 1971 they were then transported outside the State to the East where they were used in the racing circuit. Unfortunately, the engines blew up. You, in turn, sold them back to [A---] for \$5,000 instead of returning them to California.

You feel that under these circumstances that no California use tax is due on these engines. We respectively disagree with this conclusion.

Where an item of tangible personal property is purchased and first stored or used in California (see Sections 6008 and 6009 for the definition of storage and use, pamphlet enclosed), the item is subject to the California use tax notwithstanding the lack of some functional use in the State unless it can possibly come within the exemption provided in Section 6009.1. Section 6009.1 provides, in part, that storage and use do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state. Since it was not your purpose upon the initial storage or use in California to merely transport it outside the state for use thereafter, i.e., it was to be returned to California after the Phoenix race and after the East Coast race, we do not believe that it can be said that such storage or use in California was only for the purpose for transporting it outside the state for use thereafter solely outside the state.

In view of the foregoing, we have no alternative but to conclude that use tax was properly due on both engines. We regard standby service as a use within the definition of Section 6009.

Very truly yours,

Glenn L. Rigby
Tax Counsel

GLR:lb
Enclosure