



STATE BOARD OF EQUALIZATION

October 24, 1996

Re: Unidentified Taxpayer
Purchase of Motor Home

Dear

This is in response to your letter dated August 2, 1996, in which you ask whether your client would have to pay use tax on his motor home when he brings it into California. In your letter you state:

"... At all times my client has resided in California. The motor home was purchased from a dealer in Oregon on or about April 15, and at the time had about 10,000 miles on it. Since then, it has been stored in Oregon when not in use.

"This is a large motor home, and certainly could not be conveniently used for any purposes other than extended vacation trips. To date my client has taken two trips in the motor home, traveling approximately 1500 miles in May and 1200 miles in June, all outside California. He will again use the vehicle this month to go to Canada, and expects to put another 2500 miles on it.

"As far as documentation, the vehicle carries enough fuel for more than 2000 miles. Therefore, we cannot provide fuel or maintenance receipts establishing the date or itinerary of any of the use. Since we also do not have lodging receipts, there probably is no record directly connecting the motor home to the particular trips or a specific locale.

"Therefore I anticipate the documentation will be limited to declarations of my client and other persons having knowledge of the fact I have related, and comparison of odometer readings from the time of sale.

"Based on these facts, please advise me as to whether you believe the use tax would be due if the vehicle is brought into California and registered at the end of this month's trip. Would the answer be different if the client waited until after October 15?"

As you know, California imposes the use tax on the storage, use or other consumption in this state of tangible personal property purchased from a retailer for use in this state. (Rev. & Tax. Code § 6201.) There is a presumption in the Sales and Use Tax Law (section 6246) that tangible personal property shipped or brought into this state by the purchaser was purchased for storage, use, or other consumption in this state.

Since your client will be bringing the vehicle into California, this presumption applies. It is explained in subdivision (b) (3) of Sales and Use Tax Regulation 1620, a copy which is enclosed, as follows:

"[P]roperty purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. When the property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California."

It is necessary for a purchaser who claims that he or she did not purchase the property for use in this state to overcome the presumption that it was purchased for use in California by satisfactory evidence. (See, e.g., Bus. Taxes L. Guide Annot. 570.0940, 3/31/50.) If an audit is conducted, the auditor will determine whether your client has overcome the presumption that the vehicle was purchased for use in California based upon the information provided. The auditor, in addition to examining your client's use of the vehicle for the 90 day period following the purchase, would also examine the storage of the vehicle during that period to determine whether it was stored awaiting its shipment into California.

We believe it is going to be difficult for your client to overcome the presumption that the vehicle was purchased for use in California based solely upon declarations and odometer readings. It is reasonable to expect that your client would have some documents to support his contention that he used the vehicle outside California for more than 90 days. The documents your client could use to support his contention are receipts for purchases made out of state for groceries to provision the vehicle, dining out and entertainment receipts or ticket stubs from movies, receipts for maintenance such as oil changes or other repair to the vehicle, receipts for registration at parks or other facilities used during travel, receipts for dumping of waste, receipts for miscellaneous purchases, and telephone bills showing calls made from places outside the state.

Regardless of the date your client brings the vehicle into California, the analysis remains the same, as does the requirement to overcome the presumption that the vehicle was purchased for use in California by satisfactory evidence. If your client is unable to establish that he used the vehicle for more than 90 days prior to entry into California, your client can still overcome the presumption by establishing that he used the vehicle one-half or more of the time during the six month period immediately following its first entry into California. Upon review of the documentation your client submits, the Sales and Use Tax Department will determine whether your client has provided sufficient evidence to overcome the presumption that the vehicle was purchased for use in California.

As I discussed over the phone with you, it is vitally important that your client maintain good records of his use of the vehicle out of the State of California. I am sorry I cannot be more specific in my advice.

The only basis for relief for a person relying on a written opinion from the Board is when that opinion is in response to a written request for advice that discloses all facts, including the identities of the parties. (Rev. & Tax. Code § 6596.) Since you have not identified your client, this letter does not come within the provisions of section 6596.

If you have any further questions in regard to the matters contained herein, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Tax Counsel

AIP:cl

Enclosure (Reg. 1620)

cc: District Administrator