



STATE BOARD OF EQUALIZATION

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June 14, 1995

BURTON W. OLIVER
Executive Director

Mr. M--- H---
T--- B---, Inc.
XXXX E. --- Drive
---, CA XXXXX-XXXX

Re: T--- B--- H---, Inc.
SR --- XX-XXXXXX

Dear Mr. H---:

This is in response to your letter dated April 17, 1995 regarding the application of tax on sales of trailers for out-of-state or interstate use.

T--- B---, Inc. ("TBI") manufacturers and sells new trailers inside this state which maintain an unladen weight in excess of 6,000 pounds. We understand that a customer wishes to purchase trailers from TBI on an extax basis by providing your company with an affidavit for the Revenue and Taxation Code section 6388 or 6388.5 exemption from California sales and use tax. We also understand that your customer proposes to provide this affidavit to TBI by way of a preprinted form (BT-837 (5-86)) prepared by this Board requiring, among other things, "written evidence of out-of-state license and/or registration.... California base plate with prorate license acceptable."

You state that a conflict exists between section 6388.5 and the affidavit form in that section 6388.5 does not specify that a purchaser may provide a California base plate with prorate license in order to qualify for the section 6388.5 exemption. You ask whether TBI's sale to its customer is exempt from tax if the customer completes form BT-837 and provides a California base plate with prorate license rather than evidence of out-of-state license or registration.

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A retail sale means a sale for any purpose other than for resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401.) Thus, tax applies to TBI's sales of its trailers to its customer inside this state unless an exemption otherwise exists.

The exemption relevant to TBI's situation is set forth in Revenue and Taxation Code section 6388.5:

"Notwithstanding Section 6388, whenever a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more which has been manufactured or remanufactured outside this state is purchased for use without this state and is delivered by the manufacturer, remanufacturer or dealer to the purchaser within this state, and the purchaser drives or moves the vehicle to any point outside this state within 30 days from and after the date of delivery, or whenever a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more which has been manufactured or remanufactured in this state is purchased for use without this state and is delivered by the manufacturer, remanufacturer, or dealer to the purchaser within this state, and the purchaser drives or moves the vehicle to any point outside this state within 75 days from and after the date of delivery, there are exempted from the taxes imposed by Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7251) the gross receipts from the sale of and the storage, use or other consumption of the vehicle within the state, if the purchaser furnishes the following to the manufacturer, remanufacturer, or dealer:

(a) Written evidence of an out-of-state license and registration for the vehicle.

(b) The purchaser's affidavit attesting that he or she purchased the vehicle from a dealer at a specified location for use exclusively outside this state, or exclusively in interstate or foreign commerce, or both.

(c) The purchaser's affidavit that the vehicle has been moved or driven to a point outside this state within the appropriate period of either 30 days or 75 days of the date of delivery of the vehicle to him or her."

This means that TBI's sale of trailers inside this state is not subject to tax where it takes from its customer in good faith an affidavit specifying that the provisions of subdivisions (b) and (c) of section 6388.5 are each met and written evidence of an out-of-state license and registration for the vehicle.

You correctly note that section 6388.5 does not state that written evidence of a California base plate with prorate license is sufficient. Nevertheless, a vehicle used in interstate commerce may, under certain circumstances, be specially licensed in one state and pay apportioned license and registration fees to other states where the vehicle is used. (See Veh. Code § 8050 et seq.) In California, a vehicle (or trailer) used in interstate transportation may be "base titled" in California if a prorated license and registration fee is paid to those states where the vehicle is operated and that other state maintains a Uniform Vehicle Registration Proration and Reciprocity Agreement with California. (Id.) Thus, where an interstate vehicle is base titled in California, we accept copies of a California base plate with a prorate license (along with a completed section 6388.5 affidavit signed by the purchaser) as part of the proof necessary to establish the exemption from tax set forth in Revenue and Taxation Code section 6388.5 situations.¹ This means that if you take in good faith from your customer a timely, completed, and signed section 6388.5 affidavit with written evidence of a California base plate with prorate license, tax does not apply on TBI's sale of a trailer to that customer. Where TBI's customer does not fulfil these requirements, tax applies on the sale of the trailers to that customer.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

cc: --- District Administrator - --

¹ A California base plate with a prorate license is not acceptable for establishing the exemption set forth in section 6388 since that section specifically requires use of the vehicle outside this state and not just in interstate commerce. (See Rev. & Tax. Code § 6388(b).) In that regard, a vehicle base titled in California cannot be purchased for principal use outside California within the meaning of section 6388.