


STATE BOARD OF EQUALIZATION

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August 19, 1997

Mr. L--- -. S---
 C--- I--- Legal Services
 XXX West --- Avenue, Suite XXX
 ---, CA XXXXX

***Re: State Taxation Within California Indian Country
 Collection Of Sales And Use Taxes By The Tribe***

Dear Mr. S---:

First I wish to apologize for the delay in our response to your inquiry of February 19, 1997. Your inquiry was addressed to the wrong mailing unit and was not routed to the Legal Division's Sales and Use Tax Unit until the middle of July.

You explain that your client, the P--- Band of Indians, located in the northern portion of --- County, recently opened a gasoline and diesel station on its reservation and is currently paying all state diesel, gasoline and sales taxes as requested by the distributor. You specifically inquire about the application of California's Sales and Use Tax, Motor Vehicle Fuel License Tax, Diesel Fuel Tax, Oil Spill Prevention Administration and Response Fees, and Childhood Lead Poisoning Prevention Fees. In a letter dated July 15, 1997, Janet Vining, Senior Tax Counsel of the Legal Division's Special and Administration Section, responded to your inquiries relative to the Motor Vehicle Fuel License Tax, Diesel Fuel Tax, Oil Spill Prevention, Administration and Response Fees, and Childhood Lead Poisoning Prevention Fees.

This letter is in response to your inquiries regarding the collection of sales and use tax. You have first inquired whether the exemption from sales and use tax, as explained in Regulation 1616(d)(3)(A)1., applies to purchases made on your client's reservation by members of another tribe who reside on other reservation or trust land. You next inquire about documentation needed to support requests for refund for sales and use taxes for purchases made

by Indians residing on reservations. In addition, you inquire whether gasoline and fuel distributors are required to collect sales tax pursuant to collect sales tax prepayment on their products, since the tax imposed on sales to non-Indians and Indians who do not reside on reservations is considered to be a use tax. Your last two inquiries are whether the Tribe needs to register with the Board and whether it is possible to develop an arrangement whereby the state makes periodic refunds of pre-collected sales and use tax attributable to purchases made by Indians residing on reservations.

As you know, the general rule is that retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempted by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) However, Indians living on Indian reservations enjoy a special status by federal treaty. For example, Regulation 1616(d)(3)((A)1. provides that:

“Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.”

Regulation 1616(d)(2) defines an “Indian” as “any person of Indian descent who is entitled to receive services as an Indian from the United States Department of Interior.” This subdivision also defines “reservation” as including reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.”

As written, there is nothing in subdivision (d)(3)(A) 1. which requires that the Indian purchasing property from an Indian retailer on an Indian reservation must either be a member of the same tribe as the Indian retailer or reside on the reservation where the purchase is made. All that is required is for the purchasing Indian to reside on a reservation and for the purchased property to be used on reservation property more than 50 percent of the time within the first year that the property is purchased. Accordingly, in response to your first inquiry, sales to Indians which live on other reservations and are not members of the P--- Tribe qualify for the exemption provided under Regulation 1616(D)(3)(a)1.. As explained in the last sentence of this subdivision of Regulation 1616, if the property purchased is used by the purchasing Indian off reservation premises more than 50 percent during the first twelve month after the purchase, the **purchasing** Indian is required to pay use tax.

You inquire as to what type of information or documentation is required by your client to verify a purchaser’s Indian heritage and residency to support a claim for refund of pre-paid sales and use taxes attributable to purchases made on reservations by Indians who reside on

reservations. You need to obtain information that documents that the purchaser is an Indian who resides on a reservation. It is my understanding that the Bureau of Indian Affairs issues an identification card to all Indians plus a letter documenting that the identified Indian resides on a reservation. Accordingly, a copy of the purchaser's identification card, plus the date of purchase, the purchase amount, and the amount of the applicable sales and use tax should be retained to support a claim for refund. The process for filing a claim for refund will be explained below.

Your next inquiry is whether it is appropriate for the distributors of the gasoline and diesel to pre-collect the sales tax since, as explained in Regulation 1616(d)(3)(a)2., the tax collected by Indian retailers on Indian reservations on purchases made by non-Indians and Indians who do not reside on a reservation is a use tax. As Ms. Vining explained in her letter of July 15, 1997, the distributors of gasoline and diesel are liable for the collection of taxes imposed under The Motor Vehicle Fuel Tax (Rev. & Tax. Code §7301, et seq.) and under The Diesel Fuel Tax (Rev. & Tax. Code § 60001, et seq.). In addition, under The Sales and Use Code (Rev. & Tax. Code §6480 et seq. for Motor Vehicle Fuel and Rev. & Tax. Code § 6480.10 et seq. for Diesel Fuel.), distributors are also liable for the collection of a portion of the sales tax attributable to the retail sales of gasoline and diesel. As further explained by Ms. Vining, these pre-paid taxes are not imposed upon the Indian retailer but rather are imposed on the distributors, who pass this cost, as well as other costs of doing business, on to the Indian retailer.

You next question whether the Tribe is still required to register with Board for the collection of use taxes as provided under Regulation 1616(d)(3)(A)2. This regulation provides that, in the case of sales by Indian retailers to non-Indians and Indians who do not reside on reservations, the Indian retailer is required to "collect use tax from such purchasers and must register with the Board for that purpose." There have been no changes to this regulation, accordingly this requirement is still, in effect.

Lastly, you inquire whether it is possible to develop a reciprocal arrangement with the state that allows for the periodic refund of all pre-paid sales and use taxes attributable to fuel purchased by qualified Indians. There is no mechanism in place at this time for periodic refunds of pre-paid taxes, thus, claims for refund must be filed in accordance with Revenue and Taxation Code section 6902. This section provides that, in the case of persons who are required to file on a yearly basis, claims for refund must be filed within three years following the last day of the calendar month following the one year period in which the overpayment was made. (Rev. & Tax. Code §6902(a)(2).) In the case of persons who file on other than an annual basis, their claims for refund must be filed within three years from the last day of the month following the close of the quarterly period in which the overpayment was made. (Rev. & Tax. Code §6902(a)(1).) In addition, refunds of pre-paid sales and use tax, the cost of which has been passed on to an Indians residing on reservations, must be returned to each of the qualified Indians who made purchases which included the pre-paid tax. (See Rev. & Tax. Code §6901.5.)

Mr. --- -. S---

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If the pre-paid taxes attributable to fuel purchased by a qualified Indian, is deducted from the price of the fuel at the time of the sale, then the refund may be retained by the Indian retailer.

If you have any further questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Tax Counsel

PHJ:cl

cc: --- --- District Administrator (--)