



STATE BOARD OF EQUALIZATION

January 7, 1955

Dear Mr. ---

This is in reply to your letter of September 13, 1954 to Mr. X---, XY Motor Division, 1931 Myrtle Ave., El Paso, Texas, with copy to us.

You state that the Village of Lake Arthur, New Mexico, decided to purchase a fire truck. A XY truck was ordered through you. You, in turn, placed your order with the XY Motor Division and the order was filled by a truck from the Chevrolet plant at Van Nuys, California. The XY Motor Division delivered this truck to YZ., 2859 E. 50th street, Los Angeles, California, for the installation of fire fighting equipment.

The California sales tax applies to retail sales of tangible personal property in this state. Section 6007 of the Sales and Use Tax Law defines a retail sale as "a sale for any purpose other than resale in the regular course of business." That section also provides "The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, if the delivery is to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts." The XY Motor Division is an owner or former owner of tangible personal property in question. You are a retailer not engaged in business in this state and you have made a retail sale. Accordingly, the XY Motor Division is deemed to have made a retail sale and the XY Motor Division must pay tax on the retail selling price if it makes delivery in this state to a consumer (your customer or your customer's agent).

If your customer made its own contract with YZ, and if your customer's contract with you was simply to purchase a truck and have it delivered to YZ. In Los Angeles, then the tax would apply as set forth in Section 6007 quoted above. If your contract with the customer was to sell a completely equipped fire truck and if you made the agreement with the YZ and if you made the agreement with the YZ and if you made arrangements for having the truck driven from Los Angeles to New Mexico, then YZ would be your agent rather than an agent of the customer, in which case XY Motor Division would be regarded as making a delivery to a retailer (exempt sale for resale) rather than a delivery to a consumer (taxable retail sale).

If you believe that the transaction is exempt or if the facts do not fit into one of the situations which we have explained in this letter, we shall give further consideration to a more detailed statement you might wish to make. Such statement should include the identity of the person driving the unit from Los Angeles to New Mexico, the person from

whom this driver works, a description of the contractual arrangement with YZ (who made payment and who inspected for conformance to contract), etc.

Very truly yours,

Bill Holden
Assistant Counsel

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