


**STATE BOARD OF EQUALIZATION**

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August 12, 1996

Mr. --- . ---  
 ---, - & --- ---  
 --- --- --- ---, Suite ---  
 ---, CA 9XXXX

Re: Unidentified Taxpayer

Dear Mr. ---:

This is in response to your letter dated June 25, 1996, regarding the application of tax to out-of-state sales of motorhomes by your client, a motorhome dealer. You ask:

“1). If a California resident takes delivery of a motorhome (pursuant to the contract of sale) out of state with the intention of using the vehicle (functional use, etc.) for a period of not less than 90 days outside the state of California, is this vehicle subject to either sales or use tax?

“2). Would the answer be any different if this customer registered the vehicle in California?

“3). If the retailer who makes the out-of-state delivery obtains a statement from the buyer stating no use will be made in California for at least 90 days, will he be relieved of the liability to collect use tax?”

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Where title to property sold passes to the purchaser at a point outside this state, sales tax does not apply, regardless of the extent of the retailer’s participation in California in relation to the transaction. (Reg. 1620(a)(1).) Title to property passes no later than the time at which the seller completes its responsibilities with respect to physical delivery of the property. (Cal. U. Com. Code § 2401.) The retailer has the burden of proving facts establishing that the sale occurred outside California. (Reg. 1620(a)(1).)

When sales take place outside of California and sales tax therefore does not apply, use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California, unless the use is specifically exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401, Reg. 1620(b).) Although the purchaser owes the use tax, a retailer engaged in business in this state and making sales of tangible personal

property for storage, use, or other consumption in this state is required to collect the applicable use tax from the purchaser and to pay that tax to this state. (Rev. & Tax. Code §§ 6202, 6203.) Our understanding is that your client is a licensed motorhome dealer in California. Therefore, your client must collect use tax from the purchaser of the motorhome where title to the motorhome passes to the purchaser outside this state if the motorhome is purchased for use in California.

If your client sells a motorhome to a California resident, Revenue and Taxation Code section 6247 creates a presumption as to the retailer that property delivered outside of California to a purchaser known by the retailer to be a resident of California is regarded as having been purchased for use in California. The Section 6247 presumption may be controverted by a statement in writing, signed by the purchaser or the purchaser's authorized representative, and retained by your client, that the property was purchased for use outside of California. The presumption may also be controverted by other evidence satisfactory to the Board that the property was not purchased for use in California. If your client takes a Section 6247 statement in good faith from a person known by your client to be a California resident, your client is no longer responsible for collecting use tax even if the purchaser actually purchased the motorhome for use in California. In order to regard the Section 6247 statement as being taken in good faith, your client must believe that the motorhome is being purchased for use outside of California and be without knowledge of any facts which would put a reasonably prudent business under the similar circumstances on notice that the motorhome is being purchased for use in this state. (See Cal. U. Com. Code § 1201(19).) Accordingly, if your client obtains a Section 6247 statement from a purchaser who requests that your client register the vehicle in California, and it is subsequently determined that the purchaser purchased the motorhome for use in California, your client's good faith acceptance of the Section 6247 statement may be questioned.

If the retailer does not collect use tax from the purchaser and the purchaser purchases the motorhome for use in California, the purchaser is not relieved of liability for the use tax unless an exemption applies. If use tax applies, as discussed below, the purchaser is required to pay the tax to the Department of Motor Vehicles, acting for and on behalf of the Board, at the time of making an application for registration or identification. (See Rev. & Tax. Code § 6292; see also Reg. 1610(c)(1).)

Use tax applies to the purchaser's use of the motorhome in California if the purchaser is regarded as having purchased the motorhome for use in California. (See Reg. 1620(b)(1).) Property 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. (Reg. 1620(b)(3).) "Functional use" means use for which the vehicle was designed. (BTLG Annot. 570.0430 (1/7/74; 3/23/84; 1/28/91).) Additionally, even if the first functional use of the property is outside of California, Revenue and Taxation Code section 6248 creates a presumption that any vehicle bought outside this state which is brought into California within 90 days from the date of its purchase was acquired for storage, use, or other consumption in this state. Under such circumstances, use tax would apply 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. (Reg. 1620(b)(3).)

However, if the motorhome is functionally used outside of California in excess of 90 days from the date of purchase prior to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, Sales and Use Tax Regulation 1610(e)(2) provides that such use will be accepted as proof of an intent that the vehicle was not purchased for use in California. In effect, Regulation 1610(e)(2) creates an irrebuttable presumption that a vehicle is not purchased for use in California if the requirements in this regulation are met. Therefore, under such circumstances, use tax would not apply. We note that this analysis would apply regardless of whether the motorhome is registered in California.

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung  
Tax Counsel

SHC:rz

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Enclosure: Regulation 1610

cc: --- --- District Administrator-FH