



STATE BOARD OF EQUALIZATION

(916) 445-6493

September 26, 1988

Out-of-state vehicle deliveries - documentation

Dear:

In your August 2, 1988 letter to Mr. Gary Jugum, Assistant Chief Counsel, you write in summary that you represent --- Corporation. Your client modifies factory automobiles owned by its customers into stretch limousines. Your client delivers many of these cars to their owners outside the State of California. Your client believes that it has adequate proof that the delivery actually occurred outside the state, but the Board's Santa Ana office continues to require additional proof of the out-of-state delivery. You attached to your letter two examples of certificates-signed by purchasers attesting to the out-of-state delivery. You relate that --- sends a driver out with delivery instructions and a few hundred dollars in cash to pay for food and gas. --- does not give a credit card to these drivers. Many times the driver will then pick up another car and drive it back to the factory. You request that we give your client written guidelines or firm rules as to what constitutes adequate proof of out-of-state deliveries.

Opinion

Since --- is under audit by the Board, this letter should not be construed as relating to the transactions covered by that audit. As you know, if your client disagrees with the findings of a Board audit, it may file a petition for redetermination of the audit findings, or pay the tax, interest, and penalty in full and file a claim for refund. In either case, your client may have a hearing before a Board hearing officer and before the Board itself. The Board staff cannot give you absolute assurance that any particular documentation will always constitute adequate proof of out-of-state delivery. It is the fact of out-of-state delivery, not the documentation, that determines whether you client may claim the sales tax exemption under Revenue and Taxation Code Section 6396. The Board staff is always entitled to look behind the documentation of a particular transaction in order to determine the actual facts involved. For example, see Engs Motor Truck Co. v. State Board of Equalization (1987) 189 Cal. App. 3d 1458.

With the foregoing in mind, our suggestion is that your client should document out-of-state deliveries by having a certificate of out-of-state delivery executed by both the

purchaser and your client's driver before a Notary Public at the out-of-state location where the delivery occurs. The Notary's certificate should indicate that both the purchaser and the driver were present to sign the certificate in the presence of the Notary. The Board will normally accept such a certificate as documentation, not necessarily of the truth of the facts asserted in the certificate, but rather as documentation of the fact that the driver and the purchaser were both actually present at the out-of-state location on the date of delivery. Your client should also require its drivers to obtain gasoline receipts, hotel receipts, transportation receipts, and the like for their cash expenditures which will document the driver's presence at the out-of-state location on or about the date of delivery of the vehicle. Your client should retain these receipts in its records as additional documentation together with the notarized certificate of out-of-state delivery.

I enclose a copy of Regulation 1620 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Tax Counsel

JA.:jb
Enclosure