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August 1, 2006

W--- C--- A---
Attn: D--- W---
XXXX --- Plaza Circle
---, CA XXXXX

Re: W--- C--- A---

Dear Mr. W---:

This is in response to your letter dated April 14, 1994 in which you ask how tax applies to sales of automobiles by W--- C--- A--- (W---) to its out-of-state customers.

You supplied us with the following information. W--- is a California retailer making retail sales of automobiles. Some of those sales are made to out-of-state customers who hire a common carrier to pick-up and deliver the automobile to the customer's out-of-state location. The bill of lading shows the customer as both the shipper and the receiver. The common carrier picks up the vehicle from World and then delivers it to the customer's out-of-state location. The customer does not take physical possession of the vehicle in this state. We assume the customers to which you refer purchase the vehicles for their own use and not for resale. We also assume that these customers are not known by you to be California residents. I therefore do not discuss the provisions of Revenue and Taxation Code section 6247 (presumption that property purchased for delivery outside California by a purchaser known by the retailer to be a California resident is purchased for use in this state).

Discussion

A retailer owes sales tax measured by the retailer's gross receipts from the retail sale of tangible personal property in California unless the sale is specifically exempted or excluded from tax by statute. (Rev. & Tax. Code § 6051.) The sales tax is imposed upon the retailer, but the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.)

Since W--- is a California retailer and its out-of-state customers purchase the vehicles for their own use and not for resale, W---'s sale is a taxable retail sale unless there is a specific exemption applicable.

The exemption relevant to these transactions is provided by Revenue and Taxation Code section 6396. It provides an exemption from sales tax when the contract of sale requires the property to be shipped, and the property is shipped, to a point outside this state by the retailer by means of: (1) facilities of the retailer, or (2) delivery in this state by the retailer to a common carrier for shipment to an out-of-state point, whether hired by the purchaser or not. (Reg. 1620(a)(3)(B).)

According to your letter, the out-of-state customer hires a common carrier to take delivery of the automobile from World. The automobile is then shipped to the customer's out-of-state location. You further state the customer does not take possession of the vehicle until it is delivered to its out-of-state location. Thus, the delivery requirement of 1620(a)(3)(B)(2) is satisfied. You have not stated if the contract of sale requires the property to be shipped out of state (although you have stated it is shipped out-of-state) but if the contract does so state, the additional requirement of Regulation 1620 is satisfied and the transaction would be exempt from sales tax.

If we can answer any other questions please feel free to write again.

Very truly yours,

Rachel M. Aragon
Staff Counsel

RMA/md

cc: --- - District Administrator