



490.0517

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

May 14, 1990

Mr. REDACTED TEXT
REDACTED TEXT

Re: REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in response to your letter dated April 13, 1990. Your client, REDACTED TEXT, is involved in litigation regarding a motorhome sold to plaintiffs. You state:

“Pursuant to this litigation, the parties have effected a settlement which, *inter alia*, includes a replacement of the REDACTED TEXT’s original motorhome with one of greater payload capacity. The settlement is effected pursuant to Civil Code Section 1793.2(d) and plaintiff’s election for replacement rather than restitution.

“The principle [sic] term of the settlement is that plaintiffs will receive the new motorhome, and REDACTED TEXT will receive its original motorhome in exchange, thus consummating a vehicle replacement. There is no cash consideration involved otherwise, and plaintiffs are paying no money to any defendant. Plaintiffs are, however, paying the license fees to the State of California for their motorhome.”

You ask for confirmation that REDACTED TEXT’s exchange with plaintiff will be a nontaxable event. The only basis on which this transaction would not be subject to sales or use tax would be the provisions of Civil Code section 1793.2. Relevant provisions of that statute are as follows:

“(d)(1) Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

“(2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in subparagraph (B) of paragraph (4) of subdivision (3), to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in

accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

“(A) In the case of replacement, the manufacturer shall replace the buyer’s vehicle with a new motor vehicle substantially identical to the vehicle replaced. The replacement vehicle shall be accompanied by all express and implied warranties that normally accompany new motor vehicles of that specific kind. The manufacturer also shall pay for, or to, the buyer the amount of any sales or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

“....

“(e)

“(4) For the purposes of subdivision (d) and this subdivision the following terms have the following meanings:

“(A) ‘Nonconformity’ means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

“(B) ‘New motor vehicle’ means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes. ‘New motor vehicle’ includes the chassis, chassis cab, and that portion of a motorhome devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a ‘demonstrator’ or other motor vehicle sold with a manufacturer’s new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A ‘demonstrator’ is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

“(C) ‘Motorhome’ means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

“(5) No person shall sell or lease a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed, the nonconformity is corrected, and the manufacturer warrants to the new buyer or lessee in writing for a period of one year that the motor vehicle is free of that nonconformity.”

When a manufacturer replaces consumer goods pursuant to these provisions, the replacement goods are considered replacements under warranty and the tax liability is measured only by any amount that the customer pays in excess of the credit received. If the value of the replacement property is less than the credit received for the original property, the customer must be refunded the difference, including applicable sales tax reimbursement. Replacements pursuant to litigation qualify for this treatment only if satisfying all requirements of Civil Code section 1793.2. A replacement pursuant to litigation that does not satisfy all such requirements constitutes damages, and the person replacing the property is the consumer of that property.

The relevant provisions of section 1793.2 apply to consumer goods which do not conform with the applicable express warranties. The nonconformity in this case was inadequate payload. You do not state whether REDACTED TEXT had expressly warranted that the motorhome would have a specified payload. Your statement, "the payload capacity which plaintiffs allegedly were to have received in their original motorhome" indicates that there was no express warranty on this point. If so, the replacement does not come within section 1793.2.

Assuming the replacement comes within the provisions of section 1793.2, part of the replacement would be pursuant to subsection (d)(1) and part pursuant to subsection (d)(2). Although the chassis, chassis cab, and that portion of a motorhome devoted to its propulsion are regarded as a motor vehicle within the meaning of this provision. Thus, REDACTED TEXT's replacement of the motor vehicle portion of the motorhome must satisfy the provisions of subsection (d)(2) to constitute a replacement under section 1793.2. Subsection (d)(1)(A) requires that REDACTED TEXT pay for, or to, the buyer the amount of any license, registration, or other official fees which the buyer is obligated to pay in connection with the replacement. You state that REDACTED TEXT will not pay the license fee for, or to, the plaintiff. REDACTED TEXT must arrange the replacement so that it pays the license fees for, or to, the plaintiff. Otherwise, the transfer of that portion of the motorhome constituting a motor vehicle does not come within the provisions of Civil Code 1793.2.

We hope the information provided herein assists you. If you have further questions, feel free to write again.

Sincerely

David H. Levine
Tax Counsel