



STATE BOARD OF EQUALIZATION
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March 16, 2010

Mr. Dennis Rieger
1209 Van Buren Avenue
Suite #3
Salton City, CA 92275

REC'D MAR 18 2010

Dear Mr. Rieger:

This is in response to your December 4, 2009 letter to Mr. Gary Wyatt, Imperial County District 4 Supervisor, a copy of which was provided to Mr. Jerome Horton, Board Member Fourth District. Your letter was forwarded to me for response. In your letter, you provide information regarding an Indian retailer on an Indian reservation that is selling gasoline and diesel fuel without tax. As a result of the Indian retailer failing to collect and report taxes, you are at a competitive disadvantage and must get this resolved to stay in business.

As you are probably already aware, the Revenue and Taxation Code provides that sales tax is imposed on the gross receipts from the retail sales of tangible personal property in this state. The sales tax is imposed upon the retailer for the privilege of selling tangible personal property at retail in California. The use tax is complementary (and mutually exclusive) to the sales tax and is imposed upon the storage, use, or other consumption in this state of tangible personal property, not subject to the sales tax. The obligation to pay the use tax is on the consumer.

Regulation 1616, *Federal Areas*, subdivision (d)(3)(A) provides the following:

1. Sales by Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by Indians to non-Indians and Indians who do not reside on a reservation. Sales tax does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside on a reservation when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on the reservation. Except as exempted below, Indian retailers are required to collect use tax from such purchasers and must register with the Board for that purpose.

Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of meals, food or beverages that are sold for consumption on an Indian reservation.

The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law both impose a state excise tax on fuel at the point it first enters this state. The Sales and Use Tax Law requires persons selling gasoline and diesel at the wholesale level to pre-collect a portion of the sales tax. Revenue and Taxation Code section 6480.1 provides that at any time the motor vehicle fuel tax or diesel fuel tax would be imposed on any removal, entry, or sale in this state of motor vehicle fuel (gasoline) or diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom it was sold.

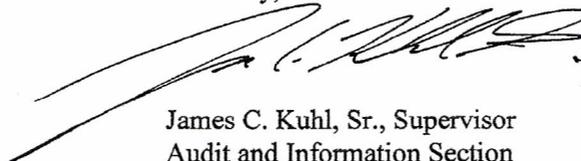
As provided by Regulation 1616, sales of gasoline and diesel by an Indian retailer on an Indian reservation to non-Indians are *not* subject to sales tax. However, the Indian retailer is required to collect the use tax from the non-Indian purchaser and report it to the state. Additionally, the fuel supplier selling fuel to the Indian retailer is liable for payment of the state excise tax and is also required to collect prepayment of sales tax at the time the fuel is sold to the Indian retailer. The law does not allow for an exemption from collecting prepayment of the sales tax when the fuel is sold to an Indian retailer.

The information provided indicates the out-of-state fuel supplier is failing to report the state excise tax and failing to collect the prepaid sales tax when selling fuel to the Indian retailer. Additionally, the Indian retailer does not appear to be collecting use tax on sales of fuel to non-Indians.

To ensure the proper taxes are reported, this information has been forwarded to our Fuel Taxes Division and the appropriate district office for investigation. However, due to confidentiality statutes, the results of our investigation may not be disclosed. Additionally, the BOE is preparing a special notice to remind fuel suppliers of the requirement to collect the prepaid tax when selling fuel to Indian retailers.

I appreciate your interest in the proper administration of the Sales and Use Tax program. Please feel free to contact me if you have any questions or concerns regarding this or any other sales and use tax matter.

Sincerely,



James C. Kuhl, Sr., Supervisor
Audit and Information Section

JCK:bem:jc

cc: Honorable Jerome Horton, Member, Fourth District
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