

**M e m o r a n d u m****320.0049**

To: Mr. D. F. Enos  
Return Review

Date: January 7, 1988

From: David H. Levine  
Tax Counsel

Subject:

This is in response to your memorandum dated December 22, 1987 regarding interest on sales tax due on sales not qualifying for the exemption provided by Revenue and Taxation Code section 6388.5.

In a letter to you dated November 20, 1987, --- discusses its purchase of certain chassis from --- The chassis, manufactured in California, were of a kind which could qualify for the Section 6388.5 exemption if, among other requirements, they were removed from California within 75 days after the date of delivery to ---.

The sale of chassis was apparently treated by --- as exempt at the time of the sale. However, in a letter dated August 20, 1987, --- notified the Board that --- had ascertained upon expiration of 75 days that some of the chassis did not qualify for the exemption. --- paid the tax due and was billed for interest that had accrued on that tax. I assume this interest was calculated based on the tax having been due for the reporting period in which the original sales were made.

--- believes "that interest should not begin to run until the expiration of the 75-day period following delivery of the chassis, since prior to that time the taxability of the chassis cannot be ascertained." Under this approach, one quarter less of interest would accrue if the sale occurred after the fifteenth day of a quarter because the tax would not be due until the due date for the quarter after the one in which the sale occurred. This is incorrect.

Tax is due on or before the last day of the month following the reporting period in which a sale occurs unless there is a specific exemption. (Rev. & Tax. Code §§ 6051, 6451.) Interest is calculated based on this due date. (Rev. & Tax. Code § 6591.) The exemption applicable to the -- transactions is provided by section 6388.5. That exemption does not, however, provide a 75-day exemption from the due date of taxes on transactions that could, but do not, qualify. A transaction is either exempt under section 6388.5 or it is not. If not, the due date of the tax is based on the date of sale, as with other taxable transactions, and not on the date of sale plus 75 days.

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