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**STATE BOARD OF EQUALIZATION**

Dear Pvt. "W":

This is with reference to your letter of March 29, 1964 regarding your 1964 Pontiac Tempest, identification No. \_\_\_\_\_.

You have cited provisions of the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. 574, and your point is well taken regarding the application of certain taxes where members of the armed forces are concerned.

The tax we are talking about in your case is not use tax for if it were, you would clearly be exempt under the above citation.

The transaction under which you obtained your Pontiac is known in this state as a "courtesy delivery" which, under Section 6007 of the California Sales and Use Tax Law, has been held to be a retail sale. The applicable part of the section defining a retail sale reads:

"The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State, is a retail sale in this State by the person making the delivery. He shall include the retail selling price of the property in his gross receipts."

The tax is a sales tax levied on the retailer for the privilege of selling tangible personal property in this state at retail. The California Supreme Court has held that the tax is a part of the price insofar as the purchaser is concerned, and not a tax on the purchaser. Our courts have further held that when the property sold is delivered to the buyer or to the buyer's representative in this state, the tax is not rendered inapplicable under the United States Constitution, because the purchaser thereafter may transport the property to a point outside the state for use outside this state. Thus, the fact that someday you may be transferred to some other state does not render tax on retail sales to servicemen stationed in California inapplicable.

The term "courtesy delivery" as applied to Sales and Use Tax Law interpretation means and includes the delivery of a motor vehicle by a California dealer to a person who purchased the vehicle from an out-of-state dealer.

On January 1, 1957, General Motors Corporation began furnishing the State Board of Equalization periodical listings of all courtesy deliveries in which they participated. About the same time, they distributed a letter to all their authorized California dealers advising them of their sales tax liability on courtesy deliveries.

Your point about multiple taxation, to the extent that the Soldiers' and Sailors' Civil Relief Act was designed to prevent same, may be well taken, but the portion of the act regarding taxes relates to taxes for which the serviceman is liable. In other words, taxes levied on the serviceman; as pointed out earlier, sales tax is a tax on the retailer for the privilege of making retail sales in this state. Accordingly, tax on retail sales, whereby the retailer is liable for the tax, does not come under the Soldiers' and Sailors' Relief Act.

We wish to point out, as you no doubt know, Idaho has no sales tax and, even if Idaho did have such a tax, we question whether it would constitutionally apply to your case since you took delivery of your car in California. For example, if you bought a car from a California dealer and took delivery in Idaho or any other state, there would be no California sales tax.

Very truly yours,

Robert H. Anderson  
Associate Tax Counsel

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