

M e m o r a n d u m**115.0012**

To: Mr. Michael Lee
Senior Tax Auditor, Local Tax Section

Date: April 30, 1991

From: John Abbott
Senior Tax Counsel

Subject: R--- C--- A--- – SS -- XX-XXXXXX
Bradley-Burns taxes – auctioneer's place of sale

On February 28, 1991 you forwarded to me two letters from the City of [name 1] to you, one dated February 6, 1991 and the other dated August 22, 1990, on the subject of R--- C--- A---. The City contends that the Bradley-Burns taxes on R--- C--- A---'s sales which occur at auctions held in the City should be allocated to the city, rather than to the countywide unallocated pool for [name] County.

In summary the City relates that R--- C--- A--- holds regularly scheduled (but temporary) auctions of classic cars at various locations in California. The city lists as the locations for these regularly scheduled auctions four hotels, one each in [name 1], [name 2], [name 3], and [name 4]. The City contends that since R--- C--- A--- has a business license in the City of [name 1], has a Department of Motor Vehicles license to sell automobiles in the City of [name 1], and has held these regularly scheduled auctions twice a year for a period of approximately ten years in the City, R--- C--- A--- should be required to obtain a subpermit for its "place of business" in [name 1] (and presumably for the other auction locations as well) and to report its Bradley-Burns tax allocations to the City of [name 1] for the sales which occur at the hotel.

In my April 30, 1990 memorandum to Mr. Larry Micheli, I expressed the opinion that in such a situation, there is nothing which requires an auctioneer, who holds a seller's permit for a permanent place of business at one California location, to obtain a separate subpermit for all auction locations at which it will be making sales for temporary periods of less than thirty days. You ask if the City of [name 1]'s letters change this opinion.

The City's letters do not change my opinion. It is within the discretion of the Board to refuse to issue subpermits for temporary auction locations. It is reasonable for the Board to decide that auctions of 30 days or less in duration are of a temporary nature and do not require subpermits. The Board is not required to change this policy merely because the auctioneer has held auctions at the same location for several years, or that substantial amounts of revenue are

generated as a result of these auctions. As the City itself points out in its February 6, 1991 letter, it admittedly would be administratively difficult for the Board to require auctioneers to obtain subpermits for all of their temporary auction locations throughout the state.

Further, it would be impermissible for the Board to have an administrative policy which allowed auctioneers to obtain subpermits in this situation, but did not require all auctioneers similarly situated to do so. In order to administer the Bradley-Burns taxes on a uniform basis, the Board could not leave the decision on whether to obtain a subpermit to the seller.

JA:es
3788I