

M e m o r a n d u m**250.0080**

To: Los Angeles District – District Principal
Auditor (JTQ)

Date: October 14, 1969

From: Tax Counsel (GJJ) - Headquarters

Subject: G--- & G--- I---

Nonpermittee

This is in reply to your memorandum of September 5, 1969, in which you request our advice as to whether a certain sale of an automobile by B--- H--- M---, Inc., of [city], California, was a sale to the United States and, as such, exempt from tax by virtue of section 6381 of the Revenue and Taxation Code.

It appears that on April 1, 1969, H--- issued two invoices--one for the sale of a new Wagoneer and one for the amount of tax which would be due on the sale of the vehicle if the sale were subject to tax. The purchaser of the vehicle, as listed on the first invoice, was the Ministry of Public Works of the Government of Nicaragua. The invoiced amounts were paid by G--- & G--- I---, Inc.--the money order receipt being marked "for delivery of one jeep to Nicaraguan Government."

G--- was reimbursed for this expenditure (exclusive of the sales tax reimbursement) on April 24, 1969, by the A--- for I--- D--- (A---). G--- now seeks a refund of the reimbursement it paid to H---.

G--- has provided us with a copy of a letter dated may 12, 1969, from the Aid Mission to Nicaragua which states that:

"The Wagoneer was purchased by G--- & G--- I---, Inc., as agents for the Government of Nicaragua and they will be reimbursed for all expenses by the United States A---. This sale is funded by an agency of the United States Government and sales taxes cannot be paid."

Finally, G--- states in its letter to our Inglewood office of August 28, 1969, that:

"G--- & G--- I---, serving as agents for the Government of Nicaragua, purchased this vehicle under the terms of a contract between G--- & G---, I--- and the Government of Nicaragua which was financed by the United States A---,..."

Apparently G--- is unaware of the basis upon which we have imposed the tax. It is clear that G--- was reimbursed for its purchase by the United States. It is clear that the vehicle was sold to the Government of Nicaragua. Neither of these factors have a bearing on the application of the tax however. Where the United States merely furnishes funds with which a vendee makes a purchase, the sale is not to the United States and is not exempt (CTS Anno. 1910.50). While foreign governments are exempt from the payment of use tax (CTS Anno. 1152.75), where a sale is made to a foreign government, the tax applies since the sales tax is a tax upon the retailer and not upon the consumer (CTS Anno. 1434.50).

Sales tax applies to sales of property which is sold and delivered to the purchaser or his representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property outside the state, and whether or not the property is actually so transported (ruling 55(a)(2)(B)). Since delivery of the vehicle in question was made in this state to a representative of the purchaser, the sale did not qualify as an exempt sale in interstate or foreign commerce.

GJJ:ph