

M e m o r a n d u m**295.1280**

To: Occasional Sales (LTD)

Date: January 16, 1969

From: Tax Counsel (TPP:LAA)

Subject: German Sales Tax

Your note of December 5, 1968 asked whether German sales tax paid on a new Porsche should be included in the taxable measure for purposes of our Sales and Use Tax Law. In our opinion it should be included.

Two possible fact situations come to mind: (1) the auto was purchased by the consumer in Germany for delivery (or shipment to) and use in California; and (2) the auto was purchased in California from a dealer who ordered the auto for the consumer.

In the first case, the use tax would apply, and under Section 6201 the measure would be the sales price. Section 6011 provides that "sales price" does not include any taxes imposed on retail sales by the United States, any sales tax imposed by any city, county, or city and county in California, or any use tax imposed by any city, county, or city and county. Section 6406 provides a credit against use tax for taxes paid to any other state or political subdivision thereof, or the District of Columbia. Nowhere in either Section 6011 or 6406 is any mention of taxes paid to foreign countries; the exemption is limited to taxes paid other states, the United States, and political subdivisions of states.

On the other hand, Section 6011 defines "sales price" as "the total amount for which tangible personal property is sold." It would appear that the price including German sales tax paid at the source is the total amount for which the Porsche was sold.

In the second case, the sales tax would apply; and under Section 6015, the measure is the gross receipts of the retailer. Section 6012, defining "gross receipts" excludes the same taxes excluded by Section 6011 in defining "sales price". No special section exists providing an exemption from sales tax for taxes paid other jurisdictions. "Gross receipts" also means the "total amount of the sale", and the conclusion is the same that German sales tax, paid at the source, is part of the total amount of the sale.

LAA :ph [lb]