

M e m o r a n d u m**295.1430**

To: Mr. Jack A. Infranca
Van Nuys District Principal Auditor

Date: August 1, 1994

From: Principal Tax Auditor

Subject: Taxability of Biennial Smog Fee

With your cover letter faxed to me July 1, 1994, you included a copy of Vehicle Industry News (VIN) which was faxed to Mr. Greg McNamee (AC) by Mr. J--- E. K--- of U--- C--- N--- Inc. VIN is a publication issued by the Department of Motor Vehicles on an "as needed" basis. This June 15, 1994, issue of VIN discussed the New Vehicle Biennial Smog Exemption which became effective July 1, 1994.

This new exemption came about as a result of Senate Bill 198. Essentially, this program allows the purchaser of a new vehicle or a commercial vehicle to defer their first smog certification renewal from the current two years after purchase to four years by checking a box so marked on the application for registration and by paying an additional \$39 at the time of the initial purchase. Any change in ownership would nullify this exemption, other than the removal of a lessor's name from the registration of a leased vehicle. This legislation also changes the methodology for determining when a vehicle's smog certification needs to be renewed from being based on the terminal digit of the vehicle identification number to two years from the initial registration date regardless of whether the terminal digit is odd or even.

A member of my staff, Mr. John Evans, spoke with Mr. R--- I--- who was assigned to the Consumer Affairs' statewide telephone hot line; and he explained that the entire \$39 goes to the state. Seven dollars goes to the DMV's vehicle inspection fund, the same as the smog certificate fee in the regular program, even though no certificate is issued for this new extension; and the remaining \$32 goes to a special fund created for this purpose and maintained by the Bureau of Automotive Repair. This fund is appropriated to repair or remove "high polluter" vehicles from the road.

If the purchaser elects to purchase the extension, the dealer must collect the \$39, include these charges on the sales contract, and remit each portion of the fee to the appropriate agency. Previous to this new legislation, a dealer was required to certify each vehicle; but there was not any requirement for the dealer to charge any fee to the customer for this certification. If the

dealer chose to charge a customer for the initial smog certification, the dealer was considered to be recovering a part of their cost of doing business. Accordingly, this reimbursement of their cost is part of the dealer's gross receipts.

Section 6012(9) however, exempts from sales tax any motor vehicle fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price. While purchasing this exemption is an option of the purchaser, once the purchaser elects to extend the initial smog certification renewal period to four years, the fee is mandatory. Since the entire \$39 of this new smog fee renewal extension is imposed by the state as a fee added to the selling price of a new vehicle, the whole fee would be exempt from sales tax, assuming it is separately stated on the sales contract and paid to the state.

If you have further questions, please let me know.

/ama
jde040.mem

cc: District Administrators

bc: Ms. Joan Armenta Roberts – Annotation Project
Annotation 294.1410 seems to need revision. Legislation originally imposed smog fees only in the South Coast Air Basin with other areas complying voluntarily. Only those areas with required compliance paid the certification fees to the state vehicle inspection fund maintained by DMV. However, currently, legislation imposes these fees in most counties and eventually all counties. All counties that mandate smog certificates are administered in the same manner.