

M e m o r a n d u m**495.0397**

To: Ms. Oveta L. Riffle, Chief
Consumer Use Tax section, MIC:37

Date: August 22, 1994

From: Pat Hildebrand
Staff Counsel

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Subject: [X]

This is in response to your memorandum dated June 17, 1994. You ask if use tax applies to the transfer of two vehicles originally acquired from federal surplus.

Included with your request for a legal opinion were several letters about this transaction, among which was a copy of an affidavit signed by --- -. [W], O.T., State Agency for Surplus Property¹, XXX --- ---, [City], CA 92633. Ms. [W] states that a Ford Sedan and Dodge Truck were received from federal surplus by the State Agency for Surplus Property and were "donated," not sold, to [X] School District, which paid the \$700 and \$450 handling and service charges.

A use tax is imposed on storage, use, or other consumption in this state of tangible personal property purchased from a retailer. (Rev. & Tax. Code § 6201.) Purchase means and includes any transfer of title or possession, exchange, or barter of tangible personal property for consideration. (Rev. & Tax. Code § 6010.) Sale means and includes any transfer of title or possession, exchange, or barter, of tangible personal property-for consideration. (Rev. & Tax. Code § 6006.) Gross receipts means the total amount of the sale of the retail sale of retailers, valued in money, whether received in money or otherwise. (Rev. & Tax Code § 6012.) This means that where there is a transfer of title for consideration, a sale occurs, and tax applies to the sale price of the tangible personal property sold. When the title to two vehicles was transferred to [X] and payments were made in connection with the transaction, on the surface, the payments appear to be consideration for a sale. The question, for Sales and Use Tax purposes, is whether the [X] payments of \$700 and \$450 are consideration for the transfer of title to the vehicles or, on the other hand, payment of fees for government services.

Public Law 94-519, Title 40 United States Code Annotated, section 484(j), provides for the disposition of federal surplus property. Congress also delegated regulatory authority to carry out the disposition of surplus property. As relevant here, 45 Code of Federal Regulations 101-44.104 states:

¹ The State Agency for Surplus Property is part of the California Department of General Services.

“Direct costs incurred by the holding agency in packing, loading, or preparing the property for shipment shall be borne by the State agency or the designated donee. Where such costs are incurred, they shall be reimbursed promptly by the State agency or designated donee upon appropriate billing, unless the holding agency waives the amount involved as being uneconomical or impractical to collect.” (Emphasis added.)

This means that costs such as packing, loading, or preparing property for shipment typically regarded as service and handling charges, **shall be reimbursed** unless uneconomical or impractical to collect.

In order to take part in the program to dispose of surplus property, the State of California was required to submit a Plan of Operation to assure compliance with the federal law.² This Plan of Operation was enacted by the California Legislature and, thereafter, signed into law by the Governor on June 12, 1984. In pertinent part, and as relevant to the vehicles transferred to the [X], Part V of this State Plan states:

“The State Agency³, in providing for the disposition of surplus property, shall require the payment of such charges by the parties to whom property is donated as the agency estimates will reimburse the agency for the average costs of procuring, storing, handling, and disposing of such property” (Footnote added.)

Since the law requires reimbursement of the handling charges, this means the tender of the \$450 and \$700 was to meet the fee requirements of a federal statutory and regulatory scheme to distribute surplus property. Reimbursement fees for government services are further explained in Business Taxes Law Guide Annotation (BTLG Annot.) 515.0195 (11/22/76) which provides that sales tax does not apply to charges made for copies of documents which are made available to members of the public as required by the California Public Records Act or by local ordinance. The same is true where the Department of Motor Vehicles is required to furnish copies of records such as magnetic tapes under the Public Records Act for statutorily mandated charges⁴. (BTLG Annot. 515.0185 (1/29/75).) If the City is required by law to furnish copies of records for a charge, or if the County is required to furnish copies of maps for a charge fixed by ordinance, it is a government service and not a sale to which sales tax applies. (BTLG Annots. 515.0120 (10/2/64) and 515.0180 (1/9/59).)

Based on the foregoing federal and state laws mandating reimbursement fees for government services, as well as the above annotations, the \$700 and \$450 fees were paid because the federal and state laws stated that handling and service charges for government services must

² 40 U.S.C.A. § 484 (j).

³ The State Agency for Surplus Property.

⁴ Gov. Code § 6250, et seq.

be reimbursed. Since there is no consideration for the transfer of titles to the two vehicles and the fees were paid because the federal law stated that handling and service charges for government service must be reimbursed, no use tax is owed by [X].

If you have further questions, feel free to write again.

PH:cl

cc: [City] District Administrator