

Mr. Robert Nunes

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Application of Sales or Use Tax to the Furnishing of Magnetic Tapes, Etc., by the Department of Motor Vehicles

You have asked whether sales or use tax applies to the furnishing by the Department of Motor Vehicles (DMV) of information concerning drivers' licenses when the information is furnished in the form of magnetic tapes, punched cards, or printouts, and a charge is made. Your question applies with respect to tapes furnished by DMV either permanently or temporarily and also with respect to tapes supplied to and processed by DMV.

We have consistently followed a rule that if the furnishing by a governmental agency of copies of records is mandatory by statute or ordinance, then, whether the amount of the charge is fixed by law or by a public official, the furnishing of the copies is an act of governmental service and not a sale.

In view of the California Public Records Act (Sections 6250, et seq., of the Government Code) the furnishing by DMV of information of the kind here in question falls within the above rule. DMV is a state agency covered by the act (Gov. C., §6252(a)). "Public records", as defined in the act, include any writings containing information relating to the conduct of the public's business (§6252(d)). "Writing" includes symbols, magnetic or paper tapes, magnetic or punched cards, discs and drums (§6252(e)). On payment of a reasonable fee, any person is entitled to receive any identifiable public record or copy thereof including computer data, which is to be provided in a form determined by the agency (§6256, 6257). Some records are exempt from public disclosure (§6254), but those exemptions are not relevant here.

There are two sections of the Vehicle Code, Sections 1810 and 1811, which permit DMV to "sell" information of the kind in question. The California Public Records Act, however, was enacted after those sections were enacted and must be regarded as controlling. That act makes it mandatory for DMV to furnish the information for a reasonable charge.

In conclusion, the furnishing by DMV of information concerning drivers' licenses, when the information is furnished in the form of magnetic tapes, punched cards, or printouts, constitutes a service rather than a sale for sales and use tax purposes, even though a charge is made. The same result follows whether tapes are furnished by DMV or supplied to and processed by DMV.

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