

**STATE BOARD OF EQUALIZATION**

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Executive Director

March 23, 1995

Re: Purchase of a Vehicle Overseas
With Return to California

Dear _____,

This is in response to your letters dated January 16, 1995 and February 9, 1995. In the January 16, 1995, letter you state:

“I had made plans to go to Europe and stay there for at least 3 ½ months and buy a car to use while there. As such, my departure was set for 8-23-94 with the return on 12-19-94. The car I bought was ready on 9-14-94 and that’s when I picked it up. After picking up the car in Munich, it was stolen in Amsterdam 4 days later. The factory told me that a replacement would take 5 weeks to make. On 10-27-94 I picked up the replacement and drove it until it was dropped off at the shipping company in France on 12-16-94. This was my original departure date and I had already purchased unchangeable tickets to return to California.

“Since I had intended to stay with and use my car for the whole 91 days, and it’s the same logical car, and it was used whenever possible, I believe I still qualify for the 91-day exemption from the 8.25% California Use Tax. Do you agree?”

In the February 9, 1995 you state:

“(1) As per Regulation 1610, section (e) of sales and use tax regulations, my intent was to go to Europe on 8-23-94 pick up my new car in Munich, Germany on 9-14-94 and stay and use my car in Europe until 12-19-94. On that date I would deliver the car to transport to California and come back myself, which is exactly I did do. This would constitute an application of the 90-day test under this regulation.

“(2) The fact that the car was stolen in Amsterdam on 9-18-94 was not my fault and I should not be penalized for it. Nor that the factory took 5 weeks to manufacture a new one in such short notice, or that there is a law in Germany that stipulates that an insurance company has to abide by a 1 month waiting period before paying a claim.

“(3) I bought and paid for only 1 car in California, which was delivered to me on 9-14-94 in Munich, Germany. I did not buy or pay for the second car, which was the exact replacement of the stolen one, and was picked up by me on 10-27-94. Therefore, the vehicle I bought and used is part of the same transaction, except for the VIN number being different due to the theft replacement by the insurance company.”

You also indicated in your letters that you had been told by a Board employee that she thought there might be relief from the use tax in certain emergency circumstances.

An use tax is been imposed on the storage, use, or other consumption in this state of tangible personal property. (Rev. & Tax. Code § 6201.) There is a rebuttable presumption that any vehicle bought outside this state which is brought into California within 90 days from the date of purchase was acquired for storage, use, or other consumption in this state. (Rev. & Tax. Code § 6248.)

Subdivision (e)(1)(2) of Sales and Use Tax Regulation 1610 provides:

“(1) For the purpose of determining whether a vehicle which is purchased outside California is purchased for use in this state, it is presumed that the vehicle was purchased for use here if it enters California within 90 days after its purchase. This presumption may be rebutted by contrary evidence satisfactory to the Board showing that the purchaser did not intend to use the vehicle in this State.

“(2) Prior out of state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the vehicle was purchased for use elsewhere. Prior out of state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time or storage for shipment to California, will be accepted as proof of an intent that the vehicle was not purchased for use in California. Accordingly, when a vehicle is purchased in a foreign country or in another state and is later shipped to California, the period of use for purposes of the 90 day test will be measured by the interval from the time the purchaser takes possession at the out of state point to the time when the vehicle is delivered to a shipping agent or placed in storage for shipment to California.”

The facts as you describe them indicate that you purchased a vehicle in Germany taking possession on October 27, 1994. Regardless of the fact that it was a replacement vehicle for one which was stolen, the date you took possession of the vehicle which you intended for and are using in California, is that date. There is no relief from the use tax provided either in the regulations or in the codes for such circumstances as you describe.

The information that you received from the Board employee is correct. Under certain circumstances, vehicles brought into California within 90 days of taking possession are not regarded as purchased for use in California. For example an individual who purchases a vehicle in Europe with the intent to sell that vehicle in Europe prior to returning to this state, but does not do so due to no fault of his or her own, might not be regarded as purchasing the vehicle for use in California even though the vehicles enters California within 90 days of its purchase. (Sales and Use Tax Annots. 570.0580 and 570.0600.)

Unlike the example discussed above, there is no question that your intent was to purchase a vehicle for use in California knowing at the time of its purchase that you would bring it into California prior to the passage of 90 days. You are therefore regarded as having purchased the vehicle for use in California and you owe tax based upon its purchase price.

Very truly yours,

Anthony I. Picciano
Staff Counsel