

M e m o r a n d u m**570.0860**

To: San Bernardino – Auditing (WEP)

Date: August 25, 1977

From: Headquarters – Legal (TPP)

Subject: Property Delivered Subject to Section 6247

This is in connection with the correspondence Mr. Rigby has had with you under the dates of June 7, June 22, and July 5, 1977. Since he is no longer in the business taxes section, I am writing this to you in his place.

Attached is a copy of a memorandum of August 2, 1977, from Carl Knopke, which is the basis for our present conclusion that Section 6247 does apply with respect to property delivered outside this state to a purchaser known by the retailer to be a resident of this state, as long as there are sufficient “incidences of involvement” by this state with the transaction. Such incidences are sufficient if the property is located here at the time the contract for sale is entered into, or if the contract is negotiated here, or if the order originates here. The incidences are not sufficient where all negotiations are outside the state and the property is delivered to the purchaser outside the state from a point outside the state.

The fact that the property is delivered to a point in this state does not prevent the application of Section 6247. The language of the section does not call for such a restriction and to infer one would seem to discriminate against out-of-state dealers. Of course, the circumstances may be such as to overcome the presumption without a specific statement in writing from the purchaser, as where the property is shipped from California to a contractor for use in fulfilling a contract outside the state. If there are circumstances known to us which make it probable that the property was used outside the state, the presumption may be considered controverted.

In accord with what is stated herein, Section 6247 may be applied to deliveries of vehicles from inventories of dealers in California, depending on whether there are sufficient "incidences of involvement," as described above.

This memorandum will supersede Annotation 570.0860, and should be applied only after that annotation is deleted from the Business Taxes Law Guide.

TPP:po

Attachment

cc: G. L. Rigby
W. E. Burkett
G. J. Jugum
C. G. Knopke