

M e m o r a n d u m

580.0112

To: Mr. Robert Nunes

Date: October 24, 1975

From: Gary J. Jugum

Subject: Automobile Transactions

This is in reply to your memorandum to Mr. T. P. Putnam dated August 29, 1975. You pose a number of questions concerning automobile transactions. Questions and answers are listed below.

1. A military serviceman stationed overseas purchases an automobile through a sales organization and designates an agent provided by the sales organization to accept delivery at an overseas point and to ship it to him in California through a California automobile dealer. The purchase contract is entered into prior to the issuance of orders transferring the serviceman to California. Neither the sale organization nor the manufacturer are engaged in business in California. The dealer delivers the vehicle to the buyer within 90 days of the execution of the contract.

a. Is the California dealer subject to sales tax?

Answer: The California dealer is not subject to sales tax. First, title to the property would pass outside California upon delivery of the automobile to the agent of the purchaser. Second, Section 6007 of the Revenue and Taxation Code, which provides that the delivery in this state of tangible personal property by a factor or an agent of a former owner or factor is a retail sale in this state by the person making the delivery if the delivery is to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state, would not work in this case to subject the California dealer to sales tax. This is because we have taken the position that we would be barred from imposing the sales tax in cases of this type in accordance with Section (a)(2)(B) of our Regulation 1620.

b. If the sales tax does not apply, does the use tax apply?

Answer: The use tax would not apply because the automobile would not have been purchased for use in this state since the purchase contract was entered into prior to the issuance of orders transferring the serviceman to California. Section 6249 provides that a member of the armed forces on active duty who purchases a vehicle prior to the effective date of his discharge shall not be subject to the presumption established by Section 6248. Section 6248 provides that there shall be a rebuttable presumption that any vehicle bought outside of this state which is brought into California within 90 days from the date of its purchase and which is subject to registration under DMV provisions was acquired for storage, use, or other consumption in this state. By the terms of Section

6249, Section 6248 would not apply in this case. The serviceman is not deemed to have purchased the vehicle for storage, use, or other consumption in this state unless at the time of purchase he intended to use it in this state, such intent resulting from his own determination, rather than from official orders received as a member of the armed services transferring him to this state.

c. If use tax applies, can the California dealer who makes delivery be held responsible for collecting the tax?

Answer: The California use tax does not apply.

d. Would the answers to the above questions be different if the serviceman did not appoint an agent for overseas delivery but the agreement specified title passage at the factory, or if there was neither an agent nor a title clause in the agreement?

Answer: No.

e. If the vehicle was shipped directly to the serviceman in California without the participation of a California deal, would the use tax apply?

Answer: No.

f. If the delivery to the serviceman by the dealer in California occurred more than ninety days after the purchase, would the tax consequences be the same?

Answer: Yes.

g. If the serviceman purchased the vehicle after receiving military orders transferring him to California, and if sales tax does not apply, would use tax apply?

Answer: Yes. The buyer would clearly be buying the vehicle for use in California.

2. Prior to receiving orders transferring him to California, a serviceman stationed in Michigan purchased an automobile from General Motors and arranged for delivery in California through an independent California dealer. The sales contract specifically provided that title was to pass at the factory in Michigan. Of course General Motors is engaged in business in California. The California dealer used his Department of Motor Vehicles report of sale to register the vehicle in the name of the serviceman.

a. Notwithstanding the title clause, does sales tax apply because of the participation by the California dealer and the use of the California dealer's report of sale?

Answer: No. We are forbidden from imposing the sales tax because the transaction is exempt from sales tax under our Regulation 1620(a)(2)(B).

b. Would the answer be the same if the dealer had not registered the vehicle, and the serviceman had registered directly at the Department of Motor Vehicles?

Answer: Yes.

c. If the sales tax applies, can the California delivering dealer be held responsible for the tax pursuant to the Board's agreement with General Motors even though General Motors is engaged in business in California?

Answer: The sales tax does not apply.

d. If the sales tax does not apply, does the use tax apply, notwithstanding Section 6249, because of the California delivery?

Answer: No.

e. If the use tax applies, can the California delivering dealer be held responsible for the tax under Section 6007 or under the Board's agreement with General Motors?

Answer: Use tax does not apply.

f. Would the answer to any of the above questions be different if the sales contract did not contain a title clause?

Answer: The sales tax would not apply because the sale would be an exempt sale in interstate commerce. The use tax would apply since the vehicle would have been purchased in this state, not outside of this state. General motors would be responsible for collection of the tax.

3. A serviceman stationed in Nevada purchased an automobile from a Nevada dealer and arranged for a "courtesy delivery" in California by a California dealer. The vehicle was purchased before the serviceman received military orders transferring him to California, and the Nevada dealer is not engaged in business in California. The California dealer delivered a vehicle from his inventory, and registered it in the name of the serviceman.

a. Is the California dealer liable for sales tax under Section 6007?

Answer: The California dealer is liable for sales tax under Section 6007 since the automobile was delivered from a California inventory.

b. If sales tax does not apply, does the use tax apply, does the use tax apply because of the California delivery?

Answer: The sales tax applies.

c. If the use tax applies, can the California dealer be held responsible for it under Section 6007?

Answer: The sales tax applies.

d. If the California dealer does not register the vehicle, would he still be liable for sales tax or use tax under Section 6007?

Answer: The California dealer is liable for sales tax even if he does not register the vehicle.

4. Would the answer to any of the above questions be different if the purchaser of the vehicles were a civilian rather than a serviceman?

Answer: Yes. The purchaser would be liable for payment of the use tax in the situations described in Questions 1a and 2d. The California dealer would be responsible for collecting the use tax. We have interpreted Section 6007 to impose this requirement on the California dealer where the sales tax cannot be applied because of the transaction's interstate character.

5. A bank, insurance company, or exempt foreign consulate official in California purchased an automobile from a European manufacturer who is not engaged in business in California. The purchaser executed a special Power of Attorney designating an agent to accept factory delivery of the vehicle and ship it to him through a California dealer.

a. Is the California dealer liable for sales tax under Section 6007?

Answer: No.

b. Would the answer be different if no agent was appointed but the sales contract contained a specific provision that title was to pass at the factory?

Answer: No.

c. Would the answer be different if no agent was appointed and there was no title clause?

Answer: No.

6. A bank, insurance company, or exempt foreign consulate official in California purchased an automobile from General Motors and arranged for delivery through a local California dealer. The sales contract specifically provided that title was to pass out of state, and General Motors shipped the vehicle to the local dealer from out-of-state stock.

a. Does delivery by the California dealer contravene the title clause so that sales tax applies?

Answer: The sales tax would not apply even though title to the property would pass to the purchaser in this state. The transaction is exempt as a sale in interstate commerce.

b. If sales tax applies, is the California dealer responsible for the tax pursuant to the Board's agreement with General Motors?

Answer: The sales tax does not apply.

7. A bank, insurance company, or exempt foreign consulate official in California purchased an automobile from a dealer in Nevada, who is not engaged in business in California, and arranged for a "courtesy delivery" of the vehicle through a California dealer. The sales contract specifically provided that title was to pass out of state. However, the vehicle was delivered from the California dealer's inventory.

a. Is the title clause null because the vehicle was delivered from the California dealer's stock?

Answer: Yes.

b. Is the California dealer liable for sales tax under Section 6007?

Answer: Yes.

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We note that these questions have been discussed with Mr. T. P. Putnam, and he is in agreement with the conclusions stated in this memorandum.

j:alicetilton