

M e m o r a n d u m

580.0395

To: Ms. Oveta L. Riffle, Chief
Consumer Use Tax Section (MIC:37)

Date: October 20, 1994

From: Kelly W. Ching
Staff Counsel

Subject: _____

This is in response to your memorandum of July 25, 1994 regarding the application of tax to the sale of a vehicle modified for physically handicapped persons.

You state that _____ purchased the vehicle, a van, in June of 1990. _____ is a quadriplegic who purchased the vehicle "in hopes of converting it to her needs." You refer to a letter sent on November 23, 1993 by a _____ in which he states that _____ "was unable to have full usage of this vehicle modified for the physically challenged due to the sensitized break system..." Apparently, the van had already been modified to some extent for use by the physically challenged before _____ bought it.

In her letter of July 10, 1993, _____ claims that she never drove the van because she was unable to adapt it to suit her needs. She also never registered it with the Department of Motor Vehicles (DMV). In March of 1991, _____ sold the van. The mileage reported upon _____ purchase of the van was 50,507.3, and the mileage reported upon the sale by her of the van was 50,938. You ask whether she owes use tax on her purchase of the van.

Our understanding is that the person who sold the van to _____ was not licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer, dismantler, or lessor-retailer of automobiles, so the use tax, but not the sales tax, may apply. (Rev. & Tax. Code § 6283.) You indicate your belief that use tax is due because records show mileage accrued during _____ ownership. We agree that over 400 miles traveled by the van during _____'s ownership supports a conclusion that she purchased the van for use in California and used it. As a person who purchased a motor vehicle and who is liable for use tax, _____ remains liable even though she sold the vehicle before making an application for transfer of registration. (Business Taxes Law Guide Annotation 585.0520 (8/10/64).)

However, in the case of sales to handicapped persons of vehicles modified for physically handicapped persons, the gross receipts from the sale, and the storage, use, or other consumption attributable to that portion of the vehicle which has been modified to enable the vehicle to be used to transport a physically handicapped person or persons are exempt from sales and use tax. (Rev. & Tax. Code § 6369.4(b), Reg. 1591(1).) Therefore, the fair market value of modifications that existed when _____ purchased the van, if any, should be excluded from the measure of tax.

(Cf. Rev. & Tax. Code § 6356.5, which applies to “new” vehicles, with Rev. & Tax. Code § 6369.4(b), which applies to “modified vehicles” without specifying that they must be new.)

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

KWC:cl