

M e m o r a n d u m**585.0022**

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

Date: November 28, 2001

From : Stephen M. Smith
Tax Counsel

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Subject: Sales & Use Tax Section 6285 – Family

This is in response to your memorandum dated October 19, 2001, in which you inquire about the application of Revenue and Taxation Code section (hereafter Section) 6285. Specifically, you asked for an explanation for how Section 6285 applies to a transfer of a vehicle from a parent to a child when the parent is a dealer and the vehicle does not come from the inventory of the dealer but is privately owned.

As a starting point, persons required to hold a seller's permit by reason of the number, scope, and character of their sales of vehicles must report and pay tax to this Agency measured by the gross receipts from such sales. (Rev. & Tax. Code, §§ 6283, 6051, 6284.) When a parent sells a vehicle to his or her child, that sale is exempt only if the parent "is not engaged in the business of selling the type of property for which the exemption is claimed." (Rev. & Tax. Code, § 6285, subd. (a); Cal. Code Regs., tit. 18, § subd. (b)(2)(A).) Based on the language of Section 6285, subdivision (a), there are two factors to be examined. First, is the parent "engaged in the business of selling?" Second, what is the "type of property" that the parent is in the business of selling?

With respect to the family exemption under Section 6285, the Board has considered that a person is engaged in the business of selling vehicles if the person holds a DMV dealer's license or should hold a DMV dealer's license. (See Rev. & Tax. Code, § 6275, subd. (b).) The issue relevant to your inquiry, however, is how strictly to limit the type of property that is excluded from the exemption. Under the statute, the sale of a motor vehicle from a person holding a DMV dealer's license to that person's child is not exempt, regardless of whether the vehicle comes from the inventory of the dealer. For example, if a Toyota dealer sells a Volvo to his or her child, that sale is not exempt because Toyotas and Volvos are the same type of property. However, if the Toyota dealer sells an aircraft or vessel to his or her child, that sale would be exempt because a vehicle is not the same type of property as a vessel or aircraft. Similarly, a

vessel dealer's sale of a motor vehicle to his or her child is exempt, but the sale of a vessel to his or her child is not exempt.

I hope this answers your question. Please feel free to contact me if you have any further questions.

SMS/ljt