M e m o r a n d u m

800.0006

To: Mr. Glenn A. Bystrom Date: May 14, 1990

From: John Abbott
Senior Tax Counsel

Subject: District use tax collections – dealers' sales of fleet vehicles to State of California

In your February 6, 1990 memorandum to Mr. Les Sorensen, you raise several questions about the application of district use tax to sales by dealers of fleet vehicles to the State of California. You note that my letter of July 20, 1988 to Mr. P--- H---, [XYZ] Dodge-Chrysler, Inc., stated that the dealer was responsible for collection of district use taxes on sales of automobiles to state agencies in the districts where those state agencies took delivery of the vehicles. You wonder if the amendments to Revenue and Taxation Code Section 7262(a)(1)(B) (which became operative January 1, 1988) should change this advice.

You note that state agencies do not report district tax liabilities for vehicle purchases on a uniform basis. Some agencies report district taxes based on place of delivery, others report based on place of use, and others pay based on place of registration. The Department of Transportation and the Department of General Services both register their vehicles in Sacramento whether or not the vehicles are ever located in Sacramento, and report based on this place of registration.

Your raise several specific hypothetical questions regarding the application of district use tax on fleet vehicle sales to the state. However, before answering your specific questions, we have set out below our opinion regarding how the district use tax applies to vehicle sales both before and after the amendments to Section 7262(a)(1)(B). Prior to January 1, 1988, if an out-of-district vehicle dealer sold a vehicle to a purchaser who was a resident of a district, and delivered the vehicle to the purchaser at the dealer's location, the dealer had no obligation to collect the district use tax on the sale. The purchaser was liable for the district use tax, but since the dealer was not engaged in business in that district and did not deliver the vehicle into the district, the dealer did not have to collect district use tax on the transaction. (Reg. 1827).

Operative January 1, 1988, subdivision (a)(1)(B) was added to Section 7262 to read in part as follows:

> "(B) 'A retailer engaged in business in the district' shall also include any retailer of any of the following: vehicles subject to registration…. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the district."

You note that this amendment clearly addresses the situation in which a purchaser who buys a vehicle for use in the district also registers the vehicle in that district. However, the amendment does not specifically deal with situations involving fleet vehicles, where the county of registration is not always the same county as the county in which the vehicle is stored or used.

Prior to January 1, 1988, if a fleet vehicle purchaser has purchased the vehicles from a dealer for use in one district, but registered the vehicles in another district, and district transactions tax did not apply, the purchaser would be liable for district taxes in the county of use, not the county of registration. Regulation 1823(b)(1) provides that district use tax applies if, among other things, property is purchased for use in a district "and is actually used there." If the place of use was not in a district, then no district tax would be due, even though the purchaser registered the vehicles in a district. Similarly, if the purchaser bought the vehicles for use in a county in which two districts each impose a 1/2% transactions and use tax, the purchaser would be liable for both district use taxes, even though the purchaser registered the vehicles in a county with only one district.

In our opinion, the January 1, 1988 amendments to Section 7262 did not change the incidence of district use tax. The amendments did not impose use tax on transactions which were previously nontaxable, and did not create a use tax exemption for transactions that were previously subject to use tax. If a fleet vehicle purchaser did not use a vehicle in a district after January 1, 1988, the purchaser's merely registering the vehicle in that district does not subject the purchase to district use tax. Also, if a purchaser uses a vehicle in a two-district county, but registers the vehicle in a one-district county, our view is that these amendments do not mean that after January 1, 1988 the purchaser is no longer liable for district use taxes in the districts of use.

Instead of imposing use tax increases or creating new exemptions, the amendments expand the definition of a retailer engaged in business in a district to include certain vehicle dealers, and require those retailers to collect district use taxes, but only in situations where the tax already applied. If the purpose of these amendments had been to enact a tax increase on some transactions and a tax exemption on other transactions, the legislation (AB 2446, Eastin) never would have passed. As an indication of the intent of the legislation, attached to this memo are the committee analyses of the Senate Revenue and Taxation Committee (July 1, 1987) and the Assembly Revenue and Taxation Committee (May 4, 1987). Neither of these committee analyses indicate that transactions which were previously exempt would now be taxable, or that transactions which were previously taxable would now be exempt.

I have set out below the specific questions you have asked, followed by our responses. You ask us to assume that all of the vehicles are registered to the purchaser, the State of California, in Sacramento.

Question

"1. A dealer delivers or arranges for delivery of a vehicle to another transaction district where it will be used."

Answer. This type of transaction is discussed in my letter to [XYZ] Dodge-Chrysler, Inc. of July 20, 1988. Since the vehicle will not be used in Sacramento County, the Sacramento district use tax will not apply, and the district use tax of the place of use applies. If the dealer is engaged in business in that district because he uses other dealers to make regular deliveries of vehicles in that district, the dealer would be obligated to collect that district's use tax under the traditional engaged in business rules of Sections 6203 and 7262(a)(1). The Section 7262(a)(1)(B) engaged in business rule does not apply.

Question

"2. A dealer delivers a vehicle in Sacramento to the state agency. Modifications are made to the vehicle; then it is transported by the state agency (within 90 days) to another transaction district for use there."

Answer. Under subdivision (a)(1)(B), the dealer is obligated to collect Sacramento district use tax, since the dealer delivers the vehicle to the district of registration for use in that district. The district use tax applies regardless of the fact that the state will also later use the vehicle in another district.

Question

"3. Same situation as number 2, except it is transported by the state agency to a location outside a district (within 90 days)."

Answer. For the same reason as in our response to question 2 above, the dealer is obligated to collect Sacramento district use tax. However, if the state could show that the vehicle was subsequently used solely outside of any district, the state may apply for refund of the district use tax collected, under Regulation 1823(b)(2)(A).

Question

"4. A dealer delivers a vehicle to a location not in a district. The vehicle is then transported (within 90 days) by the state agency to a district for use there."

Answer. The dealer would not be required to collect the Sacramento district use tax under subdivision (a)(1)(B). The state would be liable for the district use tax in the district (or districts) of use, but the dealer neither delivered the vehicle to a district for use there, nor sold the vehicle to a purchaser for use in the district of registration.

Your final question is whether or not state agencies should be treated differently from individuals or other taxpayers who register all vehicles of a multi-location fleet to one address. Our view is that the same application of tax applies whether the purchaser is the state or a company purchasing a fleet of vehicles. In either case, the vehicle purchaser is not liable for the district use tax if he never uses the vehicle in that district. Similarly, if a fleet vehicle purchaser uses vehicles in a two-district county, he cannot escape liability for the district use tax of that county merely by registering the vehicles in a one-district county.

JA:jb

bc: Mr. Gary Jugum