

**M e m o r a n d u m****800.0040**

To : Ms. Shirley Johnson  
Audit Evaluation & Planning

Date: June 24, 1992

From : John L. Waid  
Tax Counsel

Subject: Annotation Section 800.0000  
Application of District Use Tax to State Vehicle Purchasers

In partial response to your memorandum to him of March 30, 1992, Assistant Chief Counsel Gary J. Jugum notified you that I would review the letters upon which a proposed annotation on the above subject would be based. He further indicated that the annotation would be derived from this memorandum.

You attached to your memorandum to Mr. Jugum copies of Principal Tax Auditor Glenn A. Bystrom's memorandum to Sales and Use Tax Deputy Director Robert Nunes, and of his letters to Robert A. Best, Director, Department of Transportation, and John Lockwood, Director, Department of General Services, all dated May 1, 1991, on the above topic. Attached to each letter was a chart showing different applications of district use tax in the case of fleet vehicle purchases.

**OPINION****A. District Transactions and Use Taxes.****1. "Out-of-District" Exemption from Transactions Taxes.**

Pursuant to various enabling statutes, several counties have established one or more county-wide taxing districts which impose transactions and use taxes at rates of 0.25% or 0.5% of the gross receipts from the sale within the district of tangible personal property sold at retail or of the selling price of property whose use, storage, or consumption within the district is otherwise subject to tax. (§§ 7261(a)(1) & 7262(a).) There are some exceptions to the district tax. Sections 7261 and 7262 require that each district imposing a tax include in its ordinance certain provisions. One of the required provisions exempts from the transactions tax imposed on retailers, but not the use tax imposed on purchasers, sales of property to be used outside the district pursuant to a contract of sale between the retailer and the purchaser. (§ 7261(a)(6).) In

interpreting and applying this exemption Regulation 1823(a)(2) provides that the transactions tax does not apply to gross receipts from sales of tangible personal property:

“(B) To be used outside the district when the property sold is shipped to a point outside the district pursuant to a contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. If the purchaser uses the property in a district imposing transactions (sales) and use taxes, the use tax may apply.

2. Duty of Retailer to Collect.

Whether or not a retailer not located in a district (or located in a district different from that of the purchaser) is obligated to collect the district use tax from the purchaser depends on whether the retailer is “engaged in business” in the district as defined in Regulation 1827. Sub-division (b)(3) provides that a vehicle dealer is deemed to be engaged in business in any district in which the purchaser registers or licenses the vehicle purchased.

B. Tax Consequences.

State agencies may purchase a vehicle in one location, register it to a second location (generally Sacramento), and operate it from a third. This practice may cause considerable confusion as to which district tax applies, if any. If a fleet vehicle purchaser buys a vehicle from a dealer located in a district and takes delivery there, then its transactions tax applies. On the other hand, merely registering in a district a vehicle purchased outside a district does not subject the purchase to that district’s use tax. Regulation 1827(b)(3) does not deal specifically with situations involving fleet vehicles where the county of registration is not always the same as the county in which the vehicle is used. Thus, the locations where the vehicle is delivered, where it is used, and where it is registered all affect the application of district tax.

We have identified at least ten different applications of district tax that may occur in this situation, depending precisely on the circumstances of the sale. Because these circumstances are so varied, we have developed the attached decision table to illustrate these applications. While other applications may occur, these appear to be the most common.

JLW:el

cc: Larry Micheli