

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-3237

April 30, 1981

Ms. A--- S---
P.O. Box XX
--- ---, CA XXXXX

Dear Ms. S---:

Your letter of February 24, 1981 to Ms. Anne Evans of the Audit Review and Refund Unit has been referred to the legal staff for reply.

Ms. Evans has written to the dealer regarding your refund and informing the dealer of the delay in its processing.

Your letter also questions the fact that you are not going to receive a full refund of tax because your husband is a non-Indian. You have requested further clarification concerning this and a copy of any applicable law.

Sales and Use Tax Regulation 1616, "Federal Areas" provides in general that sales tax does not apply to sales of tangible personal property made to Indians who reside on an Indian reservation. Regulation 1616(b)(2) extends this exemption to sales to partnerships where all the partners are Indians since a partnership is a "person" under Revenue and Taxation Code Section 6006.

A married couple, however, is not a "person" under the Revenue and Taxation Code. As a result, the legal staff has taken the position that in situations where property is sold to and delivered to a husband and wife on the reservation, but only one of the purchasing spouses is an Indian, one-half interest in the property is exempt from tax. The half-interest in the property attributable to the non-Indian is, however, subject to tax.

This interpretation is applied only to sales to a husband and wife when both spouses are involved in the transaction. For example, if only the Indian spouse appears on the sales documents, and all other conditions for exemption are met, the sale will be considered fully exempt. If only the non-Indian spouse appears on the sales documents, the sale will be considered fully taxable.

We are enclosing a copy of Regulation 1616 for your reference. If you have further questions concerning your refund, please write or call Ms. Anne Evans, Audit Review and Refund Section, P.O. Box 1799, Sacramento, CA 95808 (916-322-3040).

Very truly yours,

Mary C. Armstrong
Staff Counsel

MCA:ba
Enc.

cc: S--- R--- T--- Sales
C--- H--- S---, Inc.
XXXX --- --- Avenue
--- ---, CA XXXXX

Bc: SR -- XX XXXXXX
--- --- – District Administrator