

M e m o r a n d u m**585.0199**

To: Mr. Vic Anderson, Supervisor
Petitions Section (MIC:38)

Date: January 29, 1997

From: Charlotte Chyr
Tax Counsel

Subject: --- [M]
S- -- XX-XXXXXX-010

This is in response to your memorandum dated November 26, 1996 to Assistant Chief Counsel Gary J. Jugum regarding the applicable statute of limitations for the issuance of a Notice of Determination against an unregistered co-owner of a vehicle, --- [M].

Briefly, we note that --- [M] (“[M]”) and --- [C] (“[C]”) entered into an agreement to purchase a classic vehicle for \$28,000. Only one of the purchasers, [C], registered the vehicle with the Department of Motor Vehicles (“DMV”). [C] falsely reported a purchase price of \$2,000 to the DMV, and paid use tax on the reported \$2,000 purchase price in the amount of \$130. Since the three year statute of limitations had already expired with respect to the issuance of a Notice of Determination against [C], the Board issued a Notice of Determination against the unregistered co-owner, [M], believing that the eight year statute of limitations applied with respect to [M].

As you know, purchasers of vehicles from persons other than vehicle dealers generally must pay use tax to the DMV (acting for and on behalf of the Board) at the time of making application for registration, unless the purchaser establishes the tax is inapplicable or furnishes to the DMV a use tax exemption or tax clearance certificate issued by the Board. (Rev. & Tax. Code § 6292(a); Reg. 1610(c)(1).) Application for registration to the DMV by the purchaser relieves the purchaser of the obligation to file a return with the Board. (Rev. & Tax. Code § 6292(c).) For taxpayers filing such returns, every notice of a deficiency determination must generally be mailed within three years after the return is filed. (Rev. & Tax. Code § 6487(a).) In the case of the failure to make such a return, every notice of a deficiency determination must be mailed within eight years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined. (Id.)

Upon review of the agreement between [C] and [M], we note that [C] and [M] invested in a classic vehicle for \$28,000 with the intention of maintaining it, selling it in the future, and sharing the profit. Both [C] and [M] were therefore engaged in a joint venture for which there was a business purpose. We have previously taken the position that in circumstances where a taxpayer may be operating as a joint venture unbeknownst to the Board, the newly discovered joint venturer would get the benefit of the joint venture having filed returns, even if the Board is

unaware that a taxpayer may be operating as a joint venture. However, the newly discovered joint venturer would be liable for any tax properly billed to the joint venture. These principles were based on the rationale that the newly discovered joint venturer would take both the detriments and benefits flowing from his or her joint venture status. The benefit would occur where the joint venture has filed returns during the audit period. The eight year statute of limitations would not be applied against the newly discovered joint venturer. However, the newly discovered joint venturer would be liable for any tax properly billed to the joint venture. These principles would apply whether the return was filed in the name of the joint venture or a sole proprietor.

Based on these principles, [M] would get the benefit of [C]'s filing of the registration, i.e. the return, but would be liable for the use tax due on the purchase of the vehicle, measured by its purchase price. The three year statute of limitations has expired with respect to [M] as with [C]. Thus, [M], who would otherwise be liable for the full amount of the use tax due (measured by the \$28,000 purchase price) can no longer be held liable for the use tax on the purchase of the vehicle. In other words, absent your Department's finding of fraud in the underreporting of tax, we conclude that the three year statute of limitations has expired with respect to [M] as with [C], such that the Board is barred by the statute of limitations from issuing the Notice of Determination against [M].

Please write again if you have further questions.

CC:cl