

**STATE BOARD OF EQUALIZATION**1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 445-3237

June 13, 1982

Ms. R--- W---
Corporate Counsel
C--- M--- C---
XXXXX N.W. XXth Avenue
---, Florida XXXXX

Dear Ms. W---:

Your letter of April 7, 1982 to Mr. T. M. Watwood has been referred to the undersigned for reply.

The facts you present in your letter are as follows:

“A) C--- does not solicit purchasers directly, but rather advertises at arms length via magazines and airports throughout the country. Interested parties initiate contact with C---, in Florida, via phone or letter.

“B) C--- sells two (2) products - -

1. Factory finished vehicle: all sales are F.O.B. Miami, and when the vehicle is delivered the purchaser must pay tax in his/her state in order to title the vehicle and get plates. Only if a purchaser takes delivery at C---’s factory does C--- collect sales tax; and

2. Kits for assembly: C--- supplies only fiberglass and optional accessories, no mechanical automotive running gear. In order for the purchaser to use C---’s parts he/she must buy all mechanical parts and assemble everything to eventually make a car. C---’s parts must be assembled and combined with mechanical parts to have a driveable vehicle.

Section 6203 of the California Revenue and Taxation Code provides that:

“Except as provided by Section 6292 and 6293 every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapters 3.5 or 4 of this part, shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefore in the manner and form prescribed by the board.

* * *

“‘Retailer engaged in business in this state’ as used in this and the preceding section means and includes any of the following:

“(a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business.

* * *

Section 6292 of the Revenue and Taxation Code provides that:

“(a) Except when the sale is by lease, when a vehicle required to be registered under the Vehicle Code is sold at retail by other than a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer, dismantler, or lessor-retailer, subject to the provisions of Section 11615.5 of the Vehicle Code, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vehicle must pay the use tax to the Department of Motor Vehicles acting for and on behalf of the board pursuant to Section 4750.5 of the Vehicle Code.”

We are of the opinion that C---’s use of airport displays, which consist of a completed automobile and sales brochures, constitutes a sales or sample room or other place of business within the meaning of section 6203. As such, C--- is required to register with the State Board of Equalization and collect use tax on its sales to California purchasers. The fact that interested parties initiate contact with C--- via telephone calls or letters does not have any bearing on the finding that C--- maintains a sales or sample room.

We are of the opinion that C--- is not required to collect use tax on its sales of factory finished vehicles sold F.O.B. Miami because sections 6203 and 6292 of the Revenue and Taxation Code provide that in the case of vehicles sold at retail “by other than a person licensed or

certificated pursuant to the Vehicle Code as a manufacturer, dealer, dismantler, or lessor-retailer, subject to the provisions of Section 11615.5 of the Vehicle Code, the retailer is not required or authorized to collect the use tax.” In situations where kits are sold, C--- would be required to collect and report use tax on its sales to California residents because it is a retailer engaged in business in this state by virtue of its displays at airports. The fact that at some later point the purchaser of the kit might assemble the kit and the necessary mechanical parts to have a driveable vehicle which will be required to be registered does not abrogate the collection responsibility at the time a kit, rather than a vehicle, is sold.

Very truly yours,

Mary C. Armstrong
Staff Counsel

MCA:ba