

Memorandum

330.2315

To: Mr. Dennis Lammerding
Occasional Sales Unit

Date: May 8, 1990

From: David H. Levine
Senior Tax Counsel

Subject: Lessor-Retailers of Vehicles

This is in response to your memorandum dated March 29, 1990 regarding the application of sales or use tax to sales of vehicles by lessor-retailers to their lessees. You state:

“It is our understanding that lessor-retailers are not required to complete a report-of-sale form (DMV) if the vehicle is being sold to the lessee. In this case, the lessee is responsible for the use tax which is paid to DMV at time of vehicle registration.

“Apparently, the lessor-retailer can choose to file a report of sale when the vehicle is sold to the lessee. Unfortunately, some lessor-retailers who sell vehicles to the lessees are completing a report of sale but not collecting any tax, citing the footnote to Reg. 1610(b) as their reference.

“The question at hand is if the lessor-retailer sells the vehicle to the lessee and completes a report-of-sale form for DMV, who is responsible for the tax, the lessor-retailer as a sales tax transaction or the lessee as a use tax transaction?

“Also, your opinion would be appreciated regarding the footnote, its background and intention. Is the footnote a valid interpretation of Vehicle Code 11615.5?”

Initially, I note that I have reviewed DMV regulations, and they provide no assistance. My interpretation regarding lessor-retailers' responsibilities with respect to filing reports of sale is based solely on provisions in the Vehicle Code. You may wish to discuss my interpretation with appropriate persons in the DMV. Sections of the Vehicle Code relevant to my analysis are as follows:

§ 371.

“Lessee includes ‘bailee’ and is a person who leases, offers to lease, or is offered the lease of a motor vehicle for a term exceeding four months.”

§ 372.

“A ‘lessor’ is a person who, for a term exceeding four months, leases or offers for lease, negotiates or attempts to negotiate a lease, or induce any person to lease a motor vehicle; and who receives or expects to receive a commission, money, brokerage fees, profit or any other thing of value from the lessee of said vehicle. ‘Lessor’ includes ‘bailor’ and ‘lease’ includes ‘bailment.’”

§ 373.

“A ‘lessor-retailer’ is a lessor or renter who, except in the circumstances described in subdivision (a) of Section 286, makes a retail sale or sales of a previously leased or rented vehicle or vehicles to other than any of the following:

“(a) The lessee of a vehicle, or the person who, for a period of at least one year, has been designated by the lessee as the driver of the vehicle covered by a written lease agreement.

“....”

§ 4456.

“(a) When selling a vehicle, dealers and lessor-retailers shall use numbered report-of-sale forms issued by the department. The forms shall be used in accordance with the following terms and conditions:

“(1) The dealer or lessor-retailer shall attach for display a copy of the report of sale on the vehicle before the vehicle is delivered to the purchaser.

“(2) The dealer or lessor-retailer shall submit to the department an application accompanied by all fees and penalties due for registration or transfer of registration of the vehicle within 20 days from the date of sale. Penalties for noncompliance with this paragraph shall be paid by the dealer or lessor-retailer. The dealer or lessor-retailer shall not charge the purchaser for the penalties.

“(3) If the department returns an application and the application was first received by the department within 20 days of the date of sale of the vehicle, the dealer or lessor-retailer shall submit a corrected application to the department within 40 days from the date of sale of the vehicle or within 20 days from the date the application is first returned by the department, whichever is later.

“(4) If the department returns an application and the application was first received by the department more than 20 days from the date of sale of the vehicle, the dealer or lessor-retailer shall submit a corrected application to the department within 40 days from the date of sale of the vehicle.

“(5) An application first received by the department more than 40 days from the date of sale of the vehicle is subject to the penalties specified in subdivisions (a) and (b) of Section 4456.1.

“(6) The dealer or lessor-retailer shall report the sale pursuant to Section 5901.

“(b) A vehicle displaying a copy of the report of sale may be operated without license plates or registration card until the license plates and registration card are received by the purchaser.”

§ 4750.5.

“(a) The department shall withhold the registration or the transfer of registration of any vehicle sold at retail to any applicant by any person other than a vehicle manufacturer or dealer holding a license and certificate issued pursuant to Chapter 4 (commencing with Section 11700) of Division 5, or an automobile dismantler holding a license and certificate issued pursuant to Chapter 3 (commencing with Section 11500) of Division 5 or a lessor-retailer holding a license issued pursuant to Chapter 3.5 (commencing with Section 11600) of Division 5, and subject to the provisions of Section 11615.5, until the applicant pays to the department the use tax measured by the sales price of the vehicle as required by the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of

Division 2 of the Revenue and Taxation Code), together with penalty, if any, unless the State Board of Equalization finds that no use tax is due....

“....”

§ 11615.

“It shall be unlawful and a violation of this code for a lessor-retailer licensed under this chapter when selling at retail a vehicle in a transaction for which this license is required:

“....”

“(e) To sell a vehicle which has not been previously leased, bailed or rented or acquired or contracted for lease or rental by the lessor-retailer.”

§ 11615.5.

“It is unlawful and a violation of this code for a person holding a license under this chapter to make a retail sale of a motor vehicle, except to the lessee of such vehicle, required to be registered pursuant to Division 3 (commencing with Section 4000) or subject to identification pursuant to Division 16.5 (commencing with Section 38000) if such person files with the department a report of sale as provided in Section 4456 with respect to such retail sale, without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.”

These provisions show that the lessor-retailer license is a limited license. The lessor-retailer may not sell a vehicle unless that vehicle was leased or acquired for lease by the lessor-retailer. Section 373 defines lessor-retailer as a lessor who makes a retail sale of a previously leased vehicle to a person other than the lessee. I interpret this provision to mean that a lessor under section 372 who sells a leased vehicle to the lessee under section 371 is not a lessor-retailer for purposes of that sale. This would also mean that the lessor is not required by section 4456 to file a report of sale when selling such a vehicle because, for purposes of that sale, the lessor is not a lessor-retailer. In light of these provisions, the meaning of section 11615.5, although not well written, becomes more clear. Although that section appears to make filing a report of sale optional because of the phrase “if such person files with the department a report of sale,” section 4456 clarifies that such filing for a sale by a lessor-retailer is mandatory. Therefore, I interpret the phrase, “except to the lessee of such vehicle,” in section 11615.5 to mean that, since such seller is not a lessor-retailer with respect to that sale, the person is not required to file a report of sale, and not to mean that the seller has an option as to whether or not to file a report of sale for that sale.

Section 4750.5 provides for the withholding of registration until use tax is paid with respect to a sale of a vehicle by any person other than, as relevant here, a lessor-retailer. However, that provision is subject to the provisions of section 11615.5. I interpret this to mean that when a person holding a license as a lessor-retailer sells a vehicle to the lessee of that vehicle, the person holding a lessor-retailer license is not required to report that sale by filing a report of sale, and the DMV will therefore withhold registration under such circumstances until the lessee-purchaser pays the appropriate use tax. Thus, it is my opinion that a lessee who purchases a vehicle from his lessor must pay use tax when registering that vehicle at the DMV. However, this is also based on the conclusion that a person licensed as a lessor-retailer does not file a report of sale for that sale. When the lessor-retailer does file a report of sale, the lessor-retailer has eliminated the need for the lessee to personally register the vehicle and has therefore eliminated the ability of the DMV to collect the use tax upon registration.

Revenue and Taxation Code section 6282 provides:

“There are exempted from the computation of the amount of the sales tax the gross receipts from sales of mobilehomes or commercial coaches required to be annually registered under the Health and Safety Code or vehicles required to be registered under the Vehicle Code when the retailer is other than a person licensed or certificated pursuant to the Health and Safety Code or the Vehicle Code as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to Section 11615.5 of the Vehicle Code.

“This exemption does not extend to the rentals payable under a lease of tangible personal property.”

Under this section, the sale of a vehicle by a person other than one licensed as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer is exempt from sales tax (and therefore subject to use tax). As discussed above, a person licensed as a lessor-retailer is not a lessor-retailer for purposes of a sale of a leased vehicle to the lessee. Since that person is not a lessor-retailer for that sale, he should not file a report of sale (only licensed persons file reports of sale). That is, the reason a person files a report of sale is because that person holds a license for that sale.

The section 6282 exemption applies only to sales by persons other than, as relevant here, licensed lessor-retailers. The filing of a report of sale by a person licensed as a lessor-retailer is an act pursuant to that license, even when the sale is to the lessee, and for that sale the seller is not a person other than a licensed lessor-retailer. The exemption of section 6282 therefore does not apply and the sale is subject to sales tax. This is true even though the seller would not have been a licensed lessor-retailer for that sale if he had not filed a report of sale.

With respect to your question regarding the footnote, I do not believe that the footnote is an interpretation of section 11615.5. Rather, it is a virtual restatement. The ambiguity in section 11615.5 is simply restated in the footnote. If my interpretation is correct, I

believe a more accurate statement for the footnote would be that “section 11615.5 of the Vehicle Code requires a licensed lessor-retailer to pay sales tax with respect to the retail sale of a motor vehicle, except for a sale to the lessee of that vehicle if the lessor-retailer does not file a report of sale for that sale. A lessee who purchases the leased vehicle must pay use tax when the lessee registers the vehicle. However, if a person licensed as a lessor-retailer does file a report of sale with respect to a sale to his lessee, that person treats the sale as authorized by the lessor-retailer license and the sale is therefore subject to sales tax.”

If you have further questions, feel free to write again.

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