

M e m o r a n d u m**425.0909**

To: Ms. Oveta L. Riffle, Chief
Consumer Use Tax Section (MIC:37)

Date: October 20, 1994

From: Kelly W. Ching
Staff Counsel

Subject: X-----

This is in response to your memorandum of July 25, 1994 regarding the application of tax to the sale of a vehicle modified for physically handicapped persons.

You state that X----- purchased the vehicle, a van, in June of 1990. X----- is a quadriplegic who purchased the vehicle "in hopes of converting it to her needs." You refer to a letter sent on November 23, 1993 by a X----- in which he states that X----- "was unable to have full usage of this vehicle modified for the physically challenged due to the sensitized brake system..." Apparently the van had already been modified to some extent for use by the physically challenged before X----- bought it.

In her letter of July 10, 1993, X----- claims that she never drove the van because she was unable to adapt it to suit her needs. She also never registered it with the Department of Motor Vehicles (DMV). In March of 1991 X----- sold the van. The mileage reported upon X-----'s purchase of the van was 50,507.3, and the mileage reported upon the sale by her of the van was 50,938. You ask whether she owes use tax on her purchase of the van.

Our understanding is that the person who sold the van to X----- was not licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer, dismantler, or lessor-retailer of automobiles, so the use tax, but not the sales tax may apply. (Rev. & Tax. Code § 6283.) You indicate you believe that use tax is due because records show mileage accrued during X-----'s ownership. We agree that over 400 miles traveled by the van during X-----'s ownership supports a conclusion that she purchased the van for use in California and used it. As a person who purchased a motor vehicle and who is liable for use tax, X----- remains liable even though she sold the vehicle before making an application for transfer of registration. (Business Taxes Law Guide Annotation 585.0520 (8/10/64).)

However, in the case of sales to handicapped persons of vehicles modified for physically handicapped persons, the gross receipts from the sale, and the storage, use, or other consumption

attributable to that portion of the vehicle which has been modified to enable the vehicle to be used to transport a physically handicapped person or persons are exempt from sales and use tax. (Rev. & Tax. Code § 6369.4(b), Reg. 1591(1).) Therefore, the fair market value of modifications that existed when X----- purchased the van, if any, should be excluded from the measure of tax. (Cf. rev. & Tax. Code § 6356.5, which applies to “new” vehicles, with Rev. & Tax. Code § 6369.4 (b), which applies to “modified vehicles” without specifying that they must be new.)

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

KWC:cl