

M e m o r a n d u m

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To: San Francisco – Compliance (FL)

Date: November 6, 1969

From: Tax Counsel (RHA) - Headquarters

Subject: _____, Ltd., inquiry on sales of vehicles to persons on active duty in the armed services.

Mr. _____, overseas manager for _____ Distributors, Ltd., sent you the following examples of purchase and delivery of vehicles to military personnel:

Basic Facts: A serviceman places an order with the factory through _____ Distributors, Ltd., in San Francisco while he is on active duty outside customs territory of the United States and before he receives official orders transferring him to some place in the continental limits of the United States:

1. He takes delivery in California but drives away immediately on [non-California] plates to Tennessee where he intends to register as he is a resident of Tennessee.

Tax: Sales tax on the dealer making the delivery in California. (See section 6007, retail sale, second paragraph, and ruling 55 on whether there is any exemption as an interstate commerce transaction.)

2. He takes delivery in California but drives away immediately on [foreign] plates to Tennessee where he intends to register as he has been assigned to duty in Tennessee.

Same as above.

3. He takes delivery in California but drives away immediately on [foreign] plates to Tennessee where he intends to register as he is a resident of Tennessee. However, he intends to return to California and take a job here.

Same as one above. When he returns here, no use tax.

4. He takes delivery in California but drives away immediately on [foreign] plates to Tennessee where he intends to register as he is a resident of Tennessee. However, a month or so later he is offered a job in California, accepts it, and returns to California.

Same as three above.

5. He takes delivery in California, drives away immediately on [foreign] plates to DMV in California where he registers, as he is a resident of California and intends to live and work in California.

Sales tax liability on the dealer making the delivery. Same as one above, except no interstate commerce question involved.

6. He takes delivery in California, drives away immediately on [foreign] plates to DMV in California where he registers, as he has been assigned to California for further military duty, but has a Tennessee address.

Same as five above.

7. He takes delivery in California, drives away immediately on [foreign] plates to DMV in California where he registers, as he has been assigned to California for further military duty and has a California address.

Same as five or six above.

8. He takes delivery in New York and registers in New York.

No California tax is applicable.

9. He takes delivery in New York and registers in New York, as he is a resident of New York, but has been assigned to California for further military duty.

Application of tax:

a. If he took delivery before he received his orders transferring him to California, there would be no use tax, as he would come under the provisions of section 6249 of the Sales and Use Tax Law.

b. If he arrived in California ninety or more days after taking delivery of the car, he would be subject to section 6248 and no use tax would apply, since our administration of section 6248 would result in the presumption that he did not purchase the car for use in California. It would not matter whether he got orders to California before or after he took the delivery of the car.

(Note: As a practical matter, so long as the car is registered in New York, presumably carrying New York plates, no one will be confronted with the tax liability question, and probably never will until such time as he makes an application to register the car in California.)

10. He takes delivery in New York, is a resident of New York, but has been assigned to California and wishes to register in California.

Application of tax:

a. No California sales tax.

b. Use tax with liability on the serviceman if he received orders transferring him to California before he took delivery of the car.

c. If he arrived in California over ninety days after taking delivery, not problem as far as use tax is concerned.

11. He takes delivery in New York, is a resident of New York but will take a job in California and therefore, wishes to register in California.

(Note: We have to assume, by the general statement of fact, that he is still in the service when he comes to California and he comes here under orders transferring him to California.)

If he is not in the service at the time he comes to California, he will not be subject to the provisions of section 6249 under any circumstances. In other words, he is just like any civilian who buys a car and comes to California with it.

Assuming he is in the service and comes here under orders, the tax application will be the same as in ten above.

Summarily, in the first seven examples the dealer who delivered the car in California will be liable for sales tax, and it does not make any difference who the purchaser is. He could be a serviceman under orders, A.W.O.L., anything, or he could be a civilian, a resident of California, or Timbucktoo. The answer is still the same.

RHA/vs