M e m o r a n d

580.0406.300

To: Ms. Jean McNeill
Return Review

Date: February 11, 1991

From: Elizabeth Abreu
Tax Counsel

Subject: O--- P--- C--- Inc.
S- -- XX-XXXXXX

By memorandum dated December 20, 1990, you inquired whether sales of automobile kits are exempt from sales tax. This inquiry arose from a review of the taxpayer's sales and use tax return in which it claimed that all of its sales were exempt.

According to the taxpayer's representative, E--- L. O---, the taxpayer had total gross sales of $9,850.00 for the second quarter of 1990. The sales were of "kitted" automobile parts to individuals who assembled the parts into vehicles and subsequently paid use tax through the DMV on the assembled vehicle.

All gross receipts from retail sales of tangible personal property are presumed to be taxable under Revenue and Taxation Code § 6051 until the contrary is established. (Rev. & Tax. Code § 6091.) We assume that the sales of the kitted automobiles were retail sales, not sales for resale. Therefore, the gross receipts from these sales are subject to sales tax unless an exemption applies.

The only possible exemption arises under Revenue and Taxation Code section 6282 which exempts from the computation of the amount of the sales tax the gross receipts from sales of vehicles required to be registered under the Vehicle Code when the retailer is other than a person licensed pursuant to the Vehicle Code as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer. In our opinion this exemption does not apply because the kitted automobile parts, at the time of their sales , were not vehicles required to be registered with the Department of Motor Vehicles.

Section 4000 of the Vehicle Code states that no person shall drive, move, or leave standing upon a highway, or in an offstreet public parking facility, any motor vehicle unless it is registered and the appropriate fees have been paid. A motor vehicle is any vehicle which is self-propelled, and a vehicle is a device by which any person or property may be propelled, moved, or drawn upon a highway. (Vehicle Code §§ 415 and 670. See also Rev. & Tax. Code § 6272 and Regulation 1610(a)(1).)

A specially constructed vehicle is a vehicle which is built for private use, not for resale, and is not constructed by a licensed manufacturer or remanufacturer. A specially constructed vehicle includes a vehicle built from a kit. (Vehicle Code § 580.) If a vehicle to be registered is a specially constructed vehicle, the application for registration shall state that fact. (Vehicle Code § 4153.)

Once built, the kitted automobiles become specially constructed vehicles and motor vehicles subject to registration. But until they were completely assembled, the kitted automobiles were not motor vehicles since they were not self-propelled. The purchaser could not drive home in a kitted automobile at the time of purchase.

Note also that if the kitted automobile parts were vehicles subject to registration at the time of sale, the taxpayer would be a vehicle manufacturer or a dealer and would be violating the Vehicle Code if it was not licensed at the time of each sale. (Vehicles Code §§ 11700, 11701, 285, and 672.) If it was licensed, the exemption under Revenue and Taxation Code section 6282 would not apply. However, in our opinion, the taxpayer was not selling vehicles subject to registration, and therefore its sales did not meet the first requirement of the exemption.

Because the sale of a kit is subject to sales tax (i.e. the sale is not exempt under section 6282), the use tax does not apply to the purchaser's use of the kits. (Rev. & Tax. Code § 6401.) Since there is no use tax due, neither the seller nor the Department of Motor Vehicles is authorized to collect use tax on a transaction of this type. These persons who assemble the kits into vehicles may register the vehicles at DMV without payment of use tax.

If you need further assistance on this matter, please let us know.

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