

M e m o r a n d u m

To: Mr. Robert Nunes
Chief of Field Operations

Date: June 2, 1989

From: Gary J. Jugum

Subject: Sales to Indians:

This is in response to your memorandum of March 28, 1989. You have raised several questions regarding the sale of property which is delivered to an Indian on an Indian reservation.

First, you have questioned the form used by some districts when vehicles are sold and delivered to an Indian reservation or to an out-of-state purchaser. As you know, these forms were originally approved by Assistant Chief Counsel Tom Putnam in 1978. The form submitted appears to meet all the requirements of Regulation 1667.

Sales and Use Tax Regulation 1667 provides that a valid exemption certificate must be in writing and include the date, the signature of the purchaser, the purchaser's agent, or employee, the name and address of the purchaser, seller's permit, if any, a description of the property purchased and a statement regarding the manner in which the property will be used. It does not require a statement that the purchaser acknowledges liability and responsibility for reporting tax in the event the property is used in some other manner. We are of the opinion that a more formalized procedure is unnecessary in light of the fact that the form is of limited use to a very small number of people.

Second, you question the sale of automobiles for "use on the reservation." This test for "use" found in Sales and Use Tax Regulation 1616 is a "principal use" test. Regulation 1616(d)(4)(E) provides that use tax does not apply to the use of tangible personal property, including vehicles purchased by an Indian from an off-reservation retailer and delivered to the purchaser on a reservation, unless within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation. Thus, if the automobile is owned and

used by an Indian on an Indian reservation, the principal use is considered to be on the reservation. When not in functional use the automobile would be "garaged" (stored or used) on the reservation.

If you have further questions concerning this matter, we will be happy to discuss them with you.

MCA:cl

cc: Ms. Judy Agan
Mr. Glenn Bystrom
Mr. Les Sorensen

bc: Business Taxes Attorneys