

**STATE BOARD OF EQUALIZATION**

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April 11, 1989

Ms. K--- A. W---  
Law Offices of A---, D--- & H---  
XXX W. --- Street  
--- ---, CA XXXXX

M--- B--- of N--- A---, Inc.  
SZ --- XX-XXXXXX

Dear Ms. W---:

I apologize for this late response to your letter of December 19, 1988, addressed to Mr. Vic Day of the Board's Sacramento staff, which was referred to me for reply. Your letter concludes that M--- B--- of N--- A--- (M---) is not required to file the reports required by Revenue and Taxation Code Section 7055 because of the limitation contained in Sales and Use Tax Regulation 1687. M--- had been requested to file such reports by the Deputy Director of Business Taxes.

The delay in responding was partially caused by difficulty in ascertaining the facts as to the ---, California dealership you refer to in your letter. If this California dealership, which is registered as a dealer with the Department of Motor Vehicles (DMV), was actually part of M---, then it appeared to me that, within Revenue and Taxation Code Section 6292, M--- should be collecting use tax on --- deliveries of vehicles to California residents for use in California. This would do away with the Board's need for reports from M--- pursuant to Section 7055 of the Revenue and Taxation Code.

I have now been informed by the Board staff that M--- was a registered dealer, but cancelled its license with the DMV as of April 1, 1988, when the --- dealership was spun off into a separate corporation. This now results in M--- not being a "dealer" within Section 6292. Therefore, M--- is not required to, nor does it collect, California use tax on European deliveries.

This is precisely the situation in which the Board staff needs the reports contemplated by Section 7055, which states as follows:

“Reports relative to use tax liability. In administration of the use tax the board may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use, or other consumption of which is subject to the tax. The reports shall be filed when the board requires and shall set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the board may require.”

In administering the use tax, the Board staff informs me that there is a substantial amount of revenue being lost because of their inability to quickly determine the identity of purchasers from M--- who take delivery in Europe and bring the cars into California for use prior to there being more than 90 days of actual use in Europe. The usual audits conducted by the Board for three-year periods (or for more than three years if waivers are given) do not supply the Board staff with the information quickly enough. The Board staff is left to assert use tax against such European purchasers on some sales which are three or more years old. This leads to lost revenue and no end of problems. We therefore require, and hereby are affirming the request by the Deputy Director of Business Taxes, that M--- begin filing the reports required by Section 7055.

Your letter of December 19, 1988 reaches the conclusion that M--- is not required to file reports pursuant to Section 7055 because of Sales and Use Tax Regulation 1687 (Title 18 of the Code of California Regulations). We disagree that Regulation 1687 is a limitation on Section 7055, as far as M--- is concerned. Regulation 1687 requires information returns to be filed by all “persons” who solicit orders for a “seller” who does not hold a Certificate of Registration – Use Tax, unless the seller is engaged in business in California and holds a seller’s permit. The Board staff is not requesting those “persons” who solicit orders for M--- to file the returns required by Regulation 1687. If the Board staff were doing so, I would be inclined to agree with you that such “persons” could legitimately argue that they need not file such returns because of Regulation 1687. This is the only limitation we believe Regulation 1687 places on Section 7055.

Here the Board is requesting M--- itself to file the reports required by Section 7055 and M--- is in precisely one of the situations which Section 7055 was enacted to cover, i.e., has information essential to the efficient collection of the use tax on autos purchased in Europe for California use. We do not believe M--- can argue that, because the Board has placed a limitation in Regulation 1687 on the requirement of returns from M---’s personnel who actually solicit the orders, that, therefore, M--- itself is relieved of supplying the information specifically contemplated by Section 7055. We, therefore, request you advise M--- to file such reports with the Board staff. If you have further questions, feel free to write or phone me.

Sincerely,

Donald J. Hennessy  
Senior Tax Counsel

DJH:jb

bc: Mr. R. Nunes  
Mr. Glenn A. Bystrom  
Mr. Jim Caldwell  
Mr. Jack Warner

Given Jack Warner's letter to the DMV of 4-5-89, a copy of which you and I received, I am inclined to take another crack at trying to convince M--- B---' counsel that they should be filing information reports with us. I don't think we can make a convincing case out of Government Code Sections 15,617 and 15,618. The former arguably applies only to property tax assessments, and both sections clearly entitle us to conduct audits of the taxpayers, but I don't think they can be read as requiring the regular filing for reports with us. I think that I would rather see Ms. Wilkinson's reply to the above argument that Regulation 1687 is not a limitation on Section 7055, as to M--- itself.