

560.0170**Memorandum**

To: San Bernardino – Compliance (ES)

Date: December 13, 1971

From: Legal Counsel (DJH) - Headquarters

Subject: REDACTED TEXT

This is in response to your memo of October 12, 1971 requesting our opinion on whether use tax applies to the purchase of motor vehicles at auction sales conducted by the Internal Revenue Service (IRS) to enforce federal tax liens.

Your position is that use tax should be paid to the Department of Motor Vehicles (DMV) at the time the vehicles are re-registered since the IRS is offering for sale only the “right, title, and interest” of the delinquent taxpayer, and it is not alleged that the property offered for sale is owned by the United States Government.

The federal courts have repeatedly held that the United States is not the owner of property seized and sold pursuant to Section 6335 of the Internal Revenue Code (IRC). The purchaser at such a sale receives only the right, title, and interest of the federal tax debtor. The United States acts only as a lienor enforcing a lien on the property seized. United States v. Sullivan, 333 F.2d 100, 116.

In our opinion the United States Government position as lienor is not sufficient to bring the purchase within Section 6204, or any other exemption provision of the Sales and Use Tax Law. If not statutorily exempt, it is clear that there is no constitutional objection to the levy of a use tax upon the use of a vehicle by a person purchasing the vehicle at an auction sale conducted by the United States Government.

IRC Section 6339 provides that the certificate of sale issued by the IRS shall be authority to the official charged with the registration of title to motor vehicles, “to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicles were transferred or assigned by the party holding the same....”

In our opinion, such recordation would include the collection of use tax from the purchaser in the usual manner.

Therefore, we agree with your opinion that use tax should be paid to DMV at the time the vehicles are re-registered.

DJH:lb

cc: Hdqrs. – Occasional Sales