

February 22, 1989

Mr. Vic Day
Occasional Sales Use Tax Unit

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Collection of Use Tax by Department of Motor Vehicles (DMV)

This is in reply to your January 27, 1989 memorandum regarding a 1981 Interagency Agreement between the Board of Equalization and the Department of Motor Vehicles (DMV) wherein the agencies agreed that the DMV would not collect use tax on *transfer only* transactions. You sent a copy of DMV Registration Manual section 28.200 which describes the nontaxable transaction as:

"An application for 'transfer only' of a vehicle or vessel not currently licensed at the time of purchase by the applicant and not subject to renewal of registration. If purchase was made on or before expiration of registration, use tax is due."

Given this information, you asked for our opinion as to whether tax should apply to the transactions.

No, we believe that the DMV Registration Manual correctly states the application of tax to the specific situation. We understand that the *transfer only* transaction arises in two factual situations. The more common of the two is where a vehicle such as a forklift is titled with DMV but not registered for operation, because the vehicle is operated only off the highway such as in a warehouse or on a farm. The other situation occurs when the owner of a vehicle takes the vehicle out of state for operation and registers the vehicle out of state but retains title in California.

We believe that the DMV is correct in not collecting use tax in either situation. Generally, when a "vehicle required to be registered under the "Vehicle Code" is sold at retail by other than a person licensed or certified under the Vehicle code as a dealer, the purchaser must pay use tax to the DMV which acts on behalf of the Board in collecting the tax. (Rev. & Tax. Code § 6292.)

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When a person sells a vehicle under either of the situations noted above, the sale is of a vehicle which is not "required to be registered"; therefore, Revenue and Taxation Code section 6292 is not applicable, and the DMV should not collect the use tax.

RLD:sr