

**M e m o r a n d u m**

585-0283

To: Ms. Karen Yee  
Consumer Use Tax Section

Date: October 10, 1997

From: David H. Levine  
Supervising Tax Counsel

Subject: Co-Signers/Guarantors

This is in response to your memorandum dated September 22, 1997 regarding a conflict between a section in Tax Tip Pamphlet Number 23 and Business Taxes Law Guide Annotation 585.0283. (9/16/75).

The annotation says that the transfer of title to a motor vehicle from the registered owner to the purchaser in exchange for consideration is a retail sale, and this is the case even if the purchaser co-signed the note for the purchaser's loan. This is correct. As stated in the annotation, the transferee paid consideration to the owner in exchange for title to the vehicle. This, by definition, is a sale. (Rev. & Tax. Code § 6006(a).) Since the seller of a vehicle is a retailer (Rev. & Tax. Code § 6275), such a transaction is subject to tax unless otherwise exempt (e.g., an intra-family transfer).

The pamphlet states:

"Normally, when one party transfers the equity in an automobile and the transferee merely assumes the payments, we have a sale or purchase, the consideration being the making of the payments for which the transferor was liable. This is so regardless of whether or not the transferee pays the transfer or anything for the equity acquired.

"We often encounter a situation where a person who buys an automobile must obtain a co-signer or guarantor of the loan in order to obtain credit. The buyer then defaults in the loan payments and the co-signer or guarantor is obliged to continue the payments to the finance agency.

"The co-signer or guarantor of a note is considered to be one of the original purchasers of the automobile. Thus, when he/she takes over responsibility for the payments, he/she is not assuming a new obligation, but rather, is fulfilling an obligation under the original contract. He/she was, as a matter of law, just as liable for the payments as was the original purchaser. Therefore, a new sale did not take place, and use tax does not apply. The foregoing would also apply to mobilehomes and commercial coaches."

Contrary to the statement quoted above, it is not the making of the payments which is the consideration for the transfer. Rather, the consideration for the transfer is the promise to assume the loan. Also contrary to the statement quoted above, the guaranteeing of a loan does not make the guarantor one of the original purchasers of the vehicle. If a guarantor were actually a purchaser and co-owner of the purchased vehicle, then the guarantor would have a co-owner's right to possess and use the vehicle. That is not the nature of a loan guarantee transaction. A co-signer or guarantor is not a purchaser of the vehicle solely by virtue of having guaranteed or co-signed the loan and is a purchaser only if that person is, in fact, a purchaser of the vehicle. When two people purchase a vehicle together, they would generally "co-sign" the loan documents. In such cases, both persons are purchasers of the vehicle and co-signers of the loan, and each person would be shown as an owner of the vehicle on the registration documents. However, when a person acts merely as a co-signer of a loan in order for another person to finance a vehicle and is not shown on the contract of sale as a purchaser nor on the registration documents as owner, that person is merely a guarantor of the loan. Under such circumstances, the seller of the vehicle does not sell the vehicle to the co-signer, and that co-signer is *not* a co-owner of the vehicle. This means that looking solely at the loan documents does not disclose whether a co-signer is a purchaser and owner of the vehicle or is solely a guarantor of the loan. A review of the contract of sale and the registration documents is necessary to make this determination.

Although a person who acts merely as a guarantor is not regarded as one of the original purchasers, there are circumstances under which the payment of the loan by the guarantor will not result in assessment of tax even if that guarantor obtains the vehicle. However, there are other circumstances where the guarantor's agreement to pay the amount due in exchange for obtaining the vehicle will result in there being a taxable sale.

To reach the correct result in a guarantee situation (including a co-signer situation where the co-signer is not the co-owner), it is necessary to ascertain the parties to the subject transfer. It will be easiest to understand by using a hypothetical. Mary is tired of driving Joe around and wants him to buy his own vehicle. Joe, however, has a poor credit record. Mary therefore decides to guarantee a loan for Joe so he can purchase a vehicle. Later, Joe is unable to pay the loan; Mary makes the payments and ends up with the vehicle. There are two basic possibilities of how Mary ended up with the vehicle, and we need to know this information to determine the application of tax.

Joe may have explained to Mary that he would be defaulting on the loan. Since Mary knew she was liable anyway (or she just wanted the vehicle), she and Joe agreed that she would make the payments and he would sign the vehicle over to her. Under these facts, as between Joe and Mary, Mary had no obligation to make any payments. Joe agreed to transfer the vehicle to Mary in exchange for her promise to make the remaining payments due on the loan. This is a transfer for consideration, that is, a sale, and tax is due. The measure of tax is the amount of the assumed liability plus the amounts, if any, that Mary agrees to pay Joe for his equity in the vehicle.

The other basic possibility is that Joe did, in fact, default on the loan, and the bank started knocking on Mary's door. As between the bank and Mary, Mary did have a pre-existing obligation as guarantor of the loan to make payments due since Joe defaulted. If Mary were to make the payments, then the bank would obviously have no right to retain possession of the vehicle. Therefore, it is not uncommon under these circumstances that the bank arranges to

transfer title to the vehicle to the guarantor who makes payments. If that happened here, Mary did not pay the bank anything she was not already obligated to do under the guarantee agreement that she surely is sorry she executed. While Mary may have "agreed" with the bank that she would pay the amounts due under the defaulted loan if the bank effected a transfer of title to the vehicle to her, she did not thereby agree to give any consideration to the bank for the transfer for which she was not already obligated to the bank. Since it was the bank that effected the transfer of title in this scenario under its power to do so under the loan agreement and Mary has not paid any consideration to the bank it was not already entitled to from her, there is no sale.

In summary, the annotation is correct. The statement in the pamphlet is not. If you have further questions, please write again.

DHL/cmm

cc: Ms. Oveta L. Riffle (MIC:37)

# Memorandum

To: Mr. P. M. Fiorino

Date: September 16, 1975

From: Gary J. Jugum

Subject: Application of Use Tax to Transfer of a Vehicle to a Co-Signer

This is in reply to your request to Mr. T. P. Putnam for a legal interpretation in response to an inquiry from the Department of Motor Vehicles (DMV) dated July 7, 1975.

DMV wishes to know whether it should require payment of use tax where title to a motor vehicle is transferred from the registered owner to a person who was a co-signer, along with the registered owner, of a note for a loan on the vehicle but who was not designated on the registration card and ownership certificate as a co-owner. DMV currently requires payment of use tax upon application of a co-signer to become registered owner.

DMV should be advised that it should require payment of the tax in instances of the type in question unless, of course, the transaction is exempt under Revenue and Taxation Code Section 6285 relating to intrafamily transfers. There may be unique circumstances under which transactions other than intrafamily transfers are nontaxable. Persons making such claims should be referred to the State Board of Equalization.

j:alicetilton