

REQUEST LETTER

06-022

August 29, 2006

Legal Assistance Office
Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

SUBJECT: Sales Tax and Import Taxes on New Cars for Military Personnel

Dear Sir or Madam:

I am a legal assistance attorney serving with the United States Army in Germany. I am writing to request information regarding sales tax and import taxes on new cars. We are currently operating under serious financial constraints, and I do not have any resources that provide the information I need.

More specifically, if a soldier purchases a new car in Germany and has the car shipped to your state, will he/she have to pay any taxes or fees to register his/her vehicle? If yes, do you have a provision that states if the car is driven for a certain number of months or accrues a certain number of miles then it is no longer considered a new car, and, therefore, no taxes or fees are due upon registration? Or is a lesser amount due? If soldiers are residents of different states temporarily residing in your state for military duty, will the registration fee be lower?

Please send as much information as possible. We are frequently asked about this subject. We greatly appreciate your assistance in helping us to better serve the thousands of soldiers, civilians, and family members in our community.

Sincerely,

NAME
TITLE

RESPONSE LETTER

October 23, 2007

NAME
ADDRESS

Re: Private Letter Ruling 06-022

Tax issues involving vehicles purchased in Europe and brought into Utah by military personnel

Dear NAME,

This letter is in response to your August 29, 2006 request for tax guidance. You asked what taxes or fees are due when a service member purchases a vehicle in Germany and has the vehicle shipped to Utah. You asked if time driven or number of miles on the car would affect taxes or fees. This letter ruling is an interpretation and application of Utah tax law to the facts presented in your letter. It is not a statement of broad Tax Commission policy. If the facts differ from the facts described in this letter ruling, please let me know so we can assure a more accurate response to your questions.

Facts

A service member purchases a car in Germany and has the car shipped to Utah. The vehicle may be new, or may have been driven for a number of months or number of miles, and thus not considered new. The service member may be a legal resident of Utah or of a different state.

Analysis

The following provisions of the Utah Code and Administrative Rules are relevant:

Utah Code Section 59-12-103. Sales and use tax base - Rates - Effective dates - Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

.....

(l) amounts paid or charged for tangible personal property if within this state the personal property is:

(i) stored;

(ii) used; or

(iii) consumed;

.....

Utah Code Section 59-12-102. Definitions [Effective until January 1, 2008].

(81) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

- (a) resale;
- (b) sublease; or
- (c) subrent.

.....

(83) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) "Sale" includes:

- (i) installment and credit sales;
- (ii) any closed transaction constituting a sale;
- (iii) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;
- (iv) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and
- (v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

Utah Code Section 59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

.....

(24) (a) purchases of property if:

(i) the property is:

(A) purchased outside of this state;

(B) brought into this state:

(I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

(II) by a nonresident person who is not living or working in this state at the time of

- the purchase;
- (C) used for the personal use or enjoyment of the nonresident person described in Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
- (D) not used in conducting business in this state; and
- (ii) for:
 - (A) property other than the property described in Subsection (24)(a)(ii)(B), the first use of the property for a purpose for which the property is designed occurs outside of this state;
 - (B) a boat, the boat is registered outside of this state; or
 - (C) a vehicle other than a vehicle sold to an authorized carrier¹, the vehicle is registered outside of this state;
- (b) the exemption provided for in Subsection (24)(a) does not apply to:
 - (i) a lease or rental of property; or
 - (ii) a sale of a vehicle exempt under Subsection (33);

.....

Administrative Rule R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

59-2-405.1. Uniform fee on certain vehicles weighing 12,000 pounds or less - Distribution of revenues - Appeals.

(1) The property described in Subsection (2), except Subsection (2)(b)(ii), is exempt from ad valorem property taxes pursuant to Utah Constitution Article XIII, Section 2, Subsection (6).

(2) (a) Except as provided in Subsection (2)(b), there is levied as provided in this part a statewide uniform fee in lieu of the ad valorem tax on:

- (i) motor vehicles as defined in Section 41-1a-102 that:
 - (A) are required to be registered with the state; and
 - (B) weigh 12,000 pounds or less; and

(ii) state-assessed commercial vehicles required to be registered with the state that weigh 12,000 pounds or less.

¹ 59-12-102 (10) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan and the International Fuel Tax Agreement;

(b) The following tangible personal property is exempt from the statewide uniform fee imposed by this section:

- (i) aircraft;
- (ii) vintage vehicles as defined in Section 41-21-1;
- (iii) tangible personal property subject to a uniform fee imposed by:
 - (A) Section 59-2-405;
 - (B) Section 59-2-405.2; or
 - (C) Section 59-2-405.3; and
- (iv) tangible personal property that is exempt from state or county ad valorem property taxes under the laws of this state or of the federal government.

(3) (a) Except as provided in Subsections (3)(b) and (c), beginning on January 1, 1999, the uniform fee for purposes of this section is as follows:

Age of Vehicle	Uniform Fee
12 or more years	\$10
9 or more years but less than 12 years	\$50
6 or more years but less than 9 years	\$80
3 or more years but less than 6 years	\$110
Less than 3 years	\$150

(b) For registrations under Section 41-1a-215.5, beginning on January 1, 2007, the uniform fee for purposes of this section is as follows:

Age of Vehicle	Uniform Fee
12 or more years	\$5
9 or more years but less than 12 years	\$25
6 or more years but less than 9 years	\$40
3 or more years but less than 6 years	\$55
Less than 3 years	\$75

(c) Notwithstanding Subsections (3)(a) and (b), beginning on September 1, 2001, for a motor vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306, the uniform fee for purposes of this section is \$5 for the event period specified on the temporary sports event registration certificate regardless of the age of the motor vehicle.

(4) Notwithstanding Section 59-2-407, property subject to the uniform fee that is brought into the state and is required to be registered in Utah shall, as a condition of registration, be subject to the uniform fee unless all property taxes or uniform fees imposed by the state of origin have been paid for the current calendar year.

(5) (a) The revenues collected in each county from the uniform fee shall be distributed by the county to each taxing entity in which the property described in Subsection (2) is located in the same proportion in which revenue collected from ad valorem real property tax is distributed.

(b) Each taxing entity shall distribute the revenues received under Subsection (5)(a) in the same proportion in which revenue collected from ad valorem real property tax is distributed.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

Relevant case law:

“Even though taxing statutes should generally be construed favorable to the taxpayer and strictly against the taxing authority, the reverse is true of exemptions. Statutes which provide for exemptions should be strictly construed, and one who so claims has the burden of showing his entitlement to the exemption. Parson Asphalt Prods., Inc. v. State Tax Comm'n, [617 P.2d 397](#), 398 (Utah 1980).”

Ruling

Purchases of vehicles for delivery in Utah. With regard to sales tax, the key is where the sale occurred. If the sale occurs in Utah, Utah sales tax applies. As noted in Rule R.865-19S-31, the time and place of the sale are determined by the contract between the buyer and the seller. If a non-resident service member arranges for the purchase of a vehicle in Germany, but the vehicle is delivered to a Utah dealer and title passes in Utah, sales tax is due in Utah. This is so because the sale, as defined in 59-12-102 (79)(a), occurred in Utah, and no statutory exemptions apply. The sale is taxable in Utah whether the service member is a Utah resident or a non-Utah resident. Both residents and non-residents, living and working in Utah, are required to pay sales taxes on purchases made in Utah, unless some exemption applies.

Purchases of vehicles for delivery in Germany—non-residents of Utah. If a non-resident service member purchases a vehicle in Germany, and title passes in Germany, sales tax is not due in Utah under Section 59-12-103(1)(a). The sale, as defined in 59-12-102 (79) (a), did not take place in Utah, as required by 59-12-103. The property was purchased in Germany. In such a case, however, the vehicle will be subject to a compensating use tax when it is brought into the state, unless specifically exempted. *See* Section 59-12-103(1)(1) that imposes a sales or use tax on the amount paid for property that is stored, used or consumed in Utah.

Section 59-12-104 (24) provides a specific exemption for tangible personal property brought into this state if three requirements are met. First, the property must be purchased outside the state. Second, the buyer must not be living or working in Utah at the time of purchase. Third, the property, when subsequently brought into Utah must be used only for personal use; that is, it may not be used

in the conduct of a trade or business.² For private motor vehicles, there is an additional requirement that the vehicle must have previously been registered outside the state. For this purpose, temporary registrations issued by other jurisdictions merely to allow a buyer to bring the vehicle to Utah are disregarded. Thus if a service member purchases a vehicle while he or she is residing Germany, title to the vehicle passes to the service member in Germany, the vehicle is registered in Germany, and the service member later ships it to Utah for his or her personal use, no Utah sales or use tax will apply.

Purchases of vehicles for delivery in Germany—residents of Utah. If a purchaser is a resident of Utah, the non-resident exemption described in Section 59-12-104(24) does not apply. A Utah use tax will be imposed on a Utah resident who registers and uses a new vehicle in Utah, regardless of the fact that the Utah resident traveled out-of-state to purchase the vehicle. In such cases, the critical factor is whether the vehicle was actually purchased for use out-of-state or for use in Utah. In practice, if the vehicle is titled and registered in another jurisdiction before it is brought to Utah, it is deemed to have been purchased for use in that jurisdiction and use tax will not be applied. If it has not been titled and registered in another jurisdiction, Utah sales tax will be assessed. For this purpose, also, temporary registrations issued by other jurisdictions to allow a buyer to bring the vehicle to Utah are disregarded.

Accordingly, in the case of a Utah resident service member purchasing a vehicle in Germany before bringing it to Utah, no Utah sales tax will be assessed if the vehicle is titled and registered in Germany before the vehicle is brought to Utah. If the vehicle is first titled and registered in Utah, Utah will assess sales tax at the time of registration.

Uniform fees in lieu of property tax. All motor vehicles weighing 12,000 pounds or less, regardless of where or when they were purchased, are subject to the uniform fees set forth in 59-12-405.1. These fees are based on the age of the vehicle. They are assessed in lieu of an ad valorem property tax. The number of miles on the vehicle is not a factor.

The Soldiers and Sailors Civil Relief Act (Title 50a §571) and R884-24P-60 (H) provides an exemption from payment of the fees set forth in 59-2-405.1. In order to receive the exemption, service personnel must provide proof of their residence in another state. A Leave and Earning Statement is acceptable to show they are not Utah residents.

Thus, service members stationed in Utah may register their vehicles in Utah without payment of the uniform fee, as long as they are not Utah residents under the Soldiers and Sailors Civil Relief Act. If they are Utah residents, however, the uniform fee on the vehicle will be due annually. Any duplicate taxes for the current year, however, may be avoided if the service member can show either (1) that property taxes for the current year were already paid to another jurisdiction, e.g., Germany, or (2) that no property taxes were imposed by that jurisdiction. *See* Section 59-2-405.1(4).

Import fees. Your letter also requested information on import taxes. The State of Utah has no import taxes or fees and plays no role in the assessment or collection of federal import taxes.

² If it is used in a trade or business, an exemption may still apply, but additional tests must be met. Because we understand the service members are purchasing automobiles for their personal use, we will not address those tests in this ruling.

Summary. In conclusion, if a non-resident service member living and working in Germany purchases a vehicle in Germany and takes title to it there and registers it there, no sales or use tax will be assessed when the vehicle is brought to Utah. If the non-resident service member arranges for the purchase in Germany, but takes title to the vehicle while living and working in Utah, the exemption in 59-12-104 (24) does not apply. Sales tax will be assessed when the vehicle is registered in Utah.

A Utah resident service member purchasing and taking title to a vehicle in Germany, but not titling or registering the vehicle in Germany, would be assessed sales tax when titling and registering the vehicle in Utah. If the vehicle is titled and registered in Germany prior to it being brought to Utah, the practice is not to assess sales tax.

Nonresident service members may be exempted from the payment of the uniform fee upon proof of residency in another state. Utah resident service members are subject to payment of the uniform fee on an annual basis. The Utah resident service member is not subject to the tax in the year the vehicle is first brought into Utah, however, if he or she establishes that: (1) property taxes were paid for that year in the prior jurisdiction, or (2) no property taxes are imposed by that jurisdiction.

Our analysis is based on the facts outlined above. Should the conditions or circumstances be different, our conclusions may differ. If you feel we have misunderstood the facts as you have presented them, or if you have additional facts that you feel may alter our position, or you have any other questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/SR/RBJ
PLR 06-022