

585.0000 VEHICLES, VESSELS, AND AIRCRAFT—Regulation 1610

See also Vehicles. Aircraft exemption, see also Aircraft. Watercraft exemption, see also Watercraft.

(a) GENERALLY

585.0003.500 **Barge.** A barge is a “vessel” within the meaning of section 6273 and its purchase is subject to tax. It is irrelevant that subsequent to the purchase it was “connected to real property by piling rings and pilings.” 12/14/95.

585.0004 **Broker Transactions.** A broker is a person who arranges transactions between buyers and sellers. The broker never, at any time, has any power or authority to cause title to pass to the buyer and never passes title directly or indirectly or causes title to pass directly or indirectly. A person who meets this definition is not a seller and is not liable for sales tax on brokered transactions. 10/29/75.

(Note: Subsequent statutory change in effect 1/1/96 re vessels and aircraft— sellers.)

585.0004.500 **Delivery of Boat Outside California.** The seller of a pleasure boat agrees to have a broker deliver the boat to the purchaser outside the California waters with the purchaser aboard the boat during its trip out of state. There is no agreement to pass title before delivery and title in fact does not transfer to the purchaser before physical delivery of the boat out of state such as would be the case if there were, e.g., a close of escrow in which the bill of sale were delivered to the purchaser before the delivery of the boat.

Even if the broker represented the seller in negotiating the sale of the boat, if the purchaser is the party who arranges with the broker to deliver the boat, the broker would be acting as the purchaser’s agent or representative in taking the boat from California to a point outside of California. Accordingly, the seller’s delivery of the boat in California to the broker as the purchaser’s representative would be subject to tax.

If the seller hires the broker to deliver the boat and, as the seller’s agent, the broker had possession and control of the boat in taking the vessel outside of California, and only gave possession or control of the boat to the purchaser outside of California, the vessel would be regarded as delivered to the purchaser outside California. This is true even if the purchaser was on board the boat on the trip from California to the out-of-state point, as long as the purchaser does nothing that could be construed as controlling the boat, e.g., steering the vessel or acting in any way other than as a mere passenger with no possession or control. 11/19/99. (2000-3).

585.0005 **DMV Report of Sale Not Required.** A lessor of automobiles sells the leased vehicles to the lessees. The Department of Motor Vehicles does not require the lessor to hold a dealer’s license for this purpose. The lessor later obtains a dealer’s license for the purpose of selling formerly leased cars to the public. The lessor must report sales to the public to DMV. Sales tax is due from the lessor on these sales.

DMV does not require the lessor to report sales to the lessees even though it now holds a dealer’s license. Accordingly, the tax due on these automobiles is the use tax which the lessee/buyer must pay to DMV at the time of changing registration. 1/19/72.

585.0006 **Due Date of Use Tax—Documented Vessels/Aircraft.** A taxpayer purchased an aircraft on June 19, 1987. The taxpayer did not hold a seller’s permit nor did the Board mail a return form to the taxpayer. The due date of the use tax on the purchase price of the aircraft was the last day of the twelfth month following the month during which the aircraft was purchased. The twelfth month following the month of purchase (June 1987) was June 1988. The last day of that month, June 30, 1988, was the due date of the tax. If some of the tax had not been paid by this date, penalty and interest accrues on the tax due. 11/8/95.

585.0008 **Exchange of Property—Sales/Purchase Price.** A person trades a five acre piece of California land worth approximately \$8,000 for a Toyota pick-up truck. The truck is worth \$7,000 average retail.

When there is an exchange of property, the measure of “consideration” for the “sale” or “purchase” is the property received (for sales tax) or the property paid (for use tax) at the time of sale and delivery of the taxable property sold (sales tax) or purchased (use tax).

If the truck is purchased from a licensed automobile dealer, the sales tax is the applicable tax and the measure of the tax is based on the property received by the dealer (the five acre piece of land worth \$8,000).

On the other hand, if the truck is purchased from a private party, the use tax is the applicable tax. The measure of tax is based upon the property the purchaser paid for the truck (the five acre piece of land worth \$8,000) and the payment of the use tax is made by the purchaser when he/she registers the truck with the Department of Motor Vehicles. 2/21/86.

585.0020 Family Exemption. A sale by stepchild to a stepparent, or vice versa, is not exempt under section 6285. However, a sale by one to his natural parent and stepparent jointly is exempt if the vehicle is reregistered to the natural and stepparent jointly as evidence of joint ownership. Similarly, a sale made jointly by a natural parent and stepparent to a child of the natural parent is exempt if the vehicle was owned jointly by the selling parents before the sale. 7/26/67.

585.0022 Family Exemption—Sale by Dealer to Family Member Is Taxable. Under Revenue and Taxation Code section 6275, the sale of a motor vehicle by an individual who holds a DMV dealer’s license to that individual’s child is not exempt from sales and use tax, regardless of whether the vehicle comes from the inventory of the dealer. For example, if a Toyota dealer sells a Volvo to his or her child, that sale is not exempt because Toyotas and Volvos are the same type of property (i.e., vehicles). However, if the Toyota dealer sells an aircraft or vessel to his or her child, that sale would be exempt because a vehicle is not the same type of property as a vessel or aircraft. Similarly, a vessel dealer’s sale of a motor vehicle or of an aircraft to his or her child is exempt, but the sale of a vessel to his or her child is not exempt. 11/28/01.

585.0025 Family Exemption—Transfer by an Association. An “association” is among the entities within the definition of “person” in section 6005, and every person selling an aircraft is a retailer. (Section 6275(a).) Since an association is a legal entity separate from its members, the transfer of an aircraft from an association to the mother of one of the two members of the association is not eligible for the family exemption as a sale from child to parent. The transfer is a taxable sale. 2/21/78.

585.0055 Hot Air Balloons. The Board has ruled that a hot air balloon is not an aircraft for purposes of Regulation 1610. The application of tax to the transfer of a balloon is the same as it is to tangible personal property in general. 3/28/91.

585.0060 House Trailer. A house trailer located on an Air Force base in California is not required to be registered in California and is, therefore, not subject to use tax when sold as long as the house trailer remains on government property and is not used on public highways. 4/11/69.

585.0080 Houseboats. A houseboat, even though not self-propelled, is a “vessel” within the meaning of section 6273 of the Sales and Use Tax Law. Thus, the purchaser of a houseboat from a person not the holder of a seller’s permit is liable for the use tax. 4/27/67.

585.0090 Houseboats and Floating Homes. A houseboat or “floating home” is a vessel within the meaning of Revenue and Taxation Code section 6273 if it constitutes personal property and is navigable.

The property should be classified as personal property unless it is affixed to the real property in such a manner as to constitute a permanent addition thereto. The property will be presumed to be personal property if the owner does not also own the real property or hold a lease for a term of years substantially equivalent to the life of the houseboat or floating home.

The term "vessel" is defined by Revenue and Taxation Code section 6273 to mean "... any boat, ship, barge, or floating thing designed for navigation in the water..." with certain specified exceptions. The term "vessel" includes houseboats and those floating homes capable of navigation under their own power or suitable for normal towing.

Floating homes are vessels without regard to the fact that they may be used as a place of residence and without regard to the nature or number of connections (sewer, water, power) between the floating home and the shore if the floating home, upon being disconnected, is suitable for normal towing.

Floating homes constructed upon reinforced concrete hulls having a rectangular vertical surface in front (as opposed to a "V" shaped or cantered bow) are not "designed for navigation in the water" but are designed merely to float. Floating homes installed upon plywood pontoons surfaced with fiber glass and open at the top are designed for flotation, not navigation. So, too, floating homes installed upon Styrofoam floats wrapped in polyethylene plastic film are not designed for navigation.

The fact that there is no means of propulsion aboard the floating home is irrelevant in determining whether the floating home is "designed for navigation." So, too, the mere absence of running lights, towing bits, cleats, or a stern notch for pushing is not conclusive. A floating home may be regarded as a "vessel" in the absence of these items.

The fact that a floating home may be required to be registered with the Department of Motor Vehicles as an "undocumented vessel" under Vehicle Code section 9850 is not conclusive as to its classification under section 6273. A floating home may be subject to registration under the Vehicle Code yet not be suitable for normal towing and thus not a "vessel" under section 6273.

Floating homes constructed on concrete hulls, pontoons, or floats of the type described, in accordance with the Uniform Building Code or local construction ordinances are not "designed for navigation."

Some boats, ships, or hulls may be designed for navigation when first manufactured. These craft may be converted to residential use and may be connected to shore facilities. This alone does not affect the fitness of the craft for movement through the water. Thus a fishing boat converted to residential use is ordinarily a vessel.

Some units are designed as floating homes from the inception and are not built in a manner suitable for movement through the water. These units are not "vessels" under section 6273.

In summary, houseboats and floating homes are personal property. Their sale is not regarded as a sale of an interest in realty. However, not all floating homes may be classified as "vessels." The sale by a private party of a floating home not qualifying as a "vessel" would ordinarily be exempt from tax as an "occasional sale." 8/31/78; 2/26/81.

585.0093 Implement of Husbandry. A heavy duty, three axle truck remanufactured exclusively for the transportation and discharge of feed and/or fertilizer on farms and not for the transportation of people or property on highways constitutes "implements of husbandry." Such vehicles are exempt from DMV registration but can be subject to DMV identification if the owner desires. Accordingly, the sale of these vehicles in California by a dealer is subject to the sales tax even if the dealer does not possess a California Department of Motor Vehicles License. 10/27/87.

585.0095 Lessor-Retailer's Sale of Vehicle to Lessee. A lessor-retailer is required to pay sales tax, with respect to the retail sale of a motor vehicle to the lessee, when the lessor-retailer files a "Report of Sale". If a "Report of Sale" is not filed, the lessee is required to pay the use tax when the vehicle is registered with the DMV. 5/8/90.

585.0100 Measure of Tax. The action of the Department of Motor Vehicles in requiring payment of use tax measured by the fair market value of purchased used vehicles is not conclusive of the measure of tax so as to prevent assessment of a deficiency measured by the difference between the fair market value and an

actual higher sales price. The term “sales price,” as used in law section 6276, is defined in section 6011 as “the total amount for which tangible personal property is sold.” The section 6276 presumption that the fair market price equals the sales price is expressly subject to rebuttal, and that right of rebuttal is available to the state as well as to the taxpayer. The provision of Vehicle Code section 4750(d) that payment of tax according to its terms will constitute “full compliance” with the Sales and Use Tax Law relates only to the section 4750(d) provision for “rounding off” dollar fractions, not to DMV determination of fair market value. 5/21/69.

585.0110 Mobilehomes. Under the mobilehome legislation effective July 1, 1980, a sale of a mobilehome to the United States would be within the exemption provided by section 6381. This conclusion follows from sections 6012.8 and 6012.9, as amended, which state that “The retailer shall be considered to be the consumer for purposes of this part if the sale by the retailer would otherwise have been subject to sales tax . . .” As the sale of the mobilehome to the United States would not otherwise have been taxable, the seller of the mobilehome is the retailer, and the exemption of section 6381 applies. The same rationale would exempt sales of mobilehomes which the retailer is required to, and does, ship to a point outside California by means of his own facilities or common or contract carrier. 10/24/80.

585.0160 Ocean Liner. The sale of the ocean liner, Queen Mary, does not qualify as an exempt occasional sale. The liner is a vessel as defined for use tax purposes and the retail sale of a vessel is specifically excluded from being an exempt occasional sale. 8/22/67.

585.0163 Persons in the Armed Services Under Orders. A person in the armed services under orders which requires his presence outside of California who purchases a vehicle outside the state while under said orders and prior to receiving orders to some station, base, or port in California is presumed not to have purchased the vehicle for use in California. In other words, he will not be subject to the presumption under section 6248.

A person in the Navy who is stationed aboard a carrier or other ship that is outside the continental United States under orders will be deemed to be personally under said orders since individual or collective orders are not issued. Thus, the orders that call for the ship to return to the United States will be controlling in the same manner as if they were personally issued to the individual. 8/21/72.

585.0173 Refueling Vehicles. Effective July 3, 1984, Vehicle Code section 4021 was enacted which exempted from registration any vehicle used exclusively for refueling aircraft, if the vehicle is only operated on a highway for a distance not exceeding one-quarter mile each way to and from a bulk storage facility. 12/14/93.

585.0175 Retail Sales of Vehicles Not Required to be Registered Under Vehicle Code. The condition that a motor vehicle be one that is required to be registered under the California Vehicle Code is an essential element of the exemption from sales tax provided by Revenue and Taxation Code section 6282. Since vehicles sold by auctioneers to out of state residents are not required to be registered under the Vehicle Code, the sales constitute retail sales subject to the sales tax. 2/23/72.

585.0180 Retailer—Person Making Single Sale as. An individual making a single sale of a vehicle, boat or airplane is not liable for use tax as a consumer provided he makes no use of the property before selling it. This is because under section 6275 a person making a single sale of this class of property is a retailer resulting in his purchaser incurring liability for use tax. Thus the seller is properly considered to have bought the item for resale and his resale does not constitute a use taxable to him. 3/11/66.

585.0190 Sale of Aircraft by a Seller of Vehicles. A sale of an aircraft by a person holding a seller’s permit for the sale of vehicles is not subject to sales tax unless that person also sold aircraft in sufficient manner to require the holding of a seller’s permit solely due to the aircraft sales. Section 6283 exempts the one aircraft sale from sales tax unless the retailer is required to hold a seller’s permit for aircraft sales even if the retailer is required to hold a seller’s permit for sales of vehicles or vessels. 10/14/87.

585.0195 Sale of Vessel by a Trust. An 85 foot motor vessel is presently owned by a trust that was created pursuant to the last will and testament of a deceased person. The sole beneficiary of the family trust is the son of the deceased. The trustee of the family trust is planning to sell the motor vessel to the natural mother of the son (who was the ex-wife of the deceased).

Section 6005 provides that a trust is a person and the current owner of the vessel is the family trust. This means that the person selling the vessel would not be the son, the beneficiary to the trust; rather, the seller would be the trust itself. Since the trust is a person under section 6285(a), the transaction cannot be exempt from tax under section 6285(a).

Since the trust is not a dealer of vessels, the sale of a vessel by a person other than a dealer of vessels is not subject to sales tax. However, the purchaser of a vessel from a person such as this family trust must pay use tax measured by the sales price of the vessel to the purchaser, unless the transaction is otherwise exempt from tax. 2/6/96.

585.0197 Seller of Vessels. The business of a taxpayer who initially registered with the Board as a welder and repairer of vessels evolved into that of a builder and seller of vessels. The taxpayer is required to hold a seller's permit by virtue of the number, scope, and character of its sales of vessels. As such, its sales of vessels are not exempt from sales tax under section 6283. The purchaser's payment of use tax to the DMV upon registration of the vessel (which would generally occur only because the taxpayer failed to properly report the sale to the DMV and to the Board) is not a defense to the taxpayer's liability for reporting and paying sales tax on its sales of vessels. 1/29/97. (Am. M98-3).

585.0198 "Sham Transaction"—Transfer of Vessel Outside State. A taxpayer purchased a documented vessel which was physically located in Long Beach, California. The bill of sale provided that title to the vessel would transfer to the purchaser upon delivery "outside the territorial waters of the state." Immediately after delivery of the vessel to the taxpayer in international waters, the taxpayer sold the vessel to his father "outside the territorial waters of the state." The vessel immediately re-entered "the territorial waters of the state." The son claims that no sales or use tax applies to his purchase of the vessel because the sale occurred outside the state and the vessel was not purchased for his use in California. Also, section 6285(a) states that the transfer of a vessel between enumerated family members is exempt from sales and use taxes in certain situations.

In this situation, a determination should be issued to both the son (seller) and the father (purchaser) since, at this point in time, there are insufficient facts to decide with certainty whether the son or the father is responsible for the use tax. The basis for a determination against both parties is that the transaction appears to be a "sham" and the mid-ocean purchase and sale was clearly intended to defeat the imposition of the applicable tax.

If there is evidence that the taxpayer has been paying property taxes, slip rental or upkeep on the vessel, he will be liable for the tax on the basis that the father, as registered owner, is merely a "straw man." On the other hand, if the father is really the owner because he continues to pay taxes, slip rental or upkeep, the Board should assess tax against the father on the basis that the son was merely a "straw man" or an agent to facilitate the father's purchase of the vessel. 7/21/95.

585.0199 Statute of Limitation—Unregistered Co-Owner of Vehicle. Two parties, A and B, entered into an agreement to invest in a classic vehicle for \$28,000 with the intention of maintaining it, selling it in the future, and sharing the profit. Only one of the purchasers, B, registered the vehicle with the Department of Motor Vehicles (DMV). B falsely reported a purchase price of \$2,000 to the DMV and paid use tax on the reported \$2,000 purchase price. Since the three-year statute of limitations had already expired since the use tax was paid DMV, the question arises whether the Board can issue a Notice of Determination against the unregistered co-owner, A, based on the eight-year statute of limitations applying with respect to A.

Based on the agreement, both A and B were engaged in a joint venture for which there was a business purpose. The Board has previously taken the position that in circumstances where a taxpayer may be operating as a joint venture unbeknownst to the Board, the newly discovered joint venture would get the

benefit of the joint venture having filed returns, even if the Board is unaware that a taxpayer may be operating as a joint venture. These principles were based on the rationale that the newly discovered joint venture would take the detriments and benefits flowing from his or her joint venture status. These principles would apply whether the return was filed in the name of the joint venture or a sole proprietor.

Based on these principles, A would get the benefit of B's filing of the registration, i.e., the return. The three-year statute of limitations has expired with respect to A, as with B. Thus, A cannot be held liable for the use tax measured by the \$28,000 purchase price. In other words, absent the Board's finding of fraud in the underreporting of tax, the Board is barred by the statute of limitations from issuing the Notice of Determination against A. 1/29/97.

585.0200 Stolen Vehicle. Refund of use tax paid by a purchaser on a private sale of a stolen car, which was later confiscated by the police, was authorized because the seller had no title to the car which he could legally transfer to the buyer. 2/3/70.

585.0220 Title Transfer-Vehicles. The key to the proper tax rate in all vehicle transactions is the date of purchase. Possession and title usually pass together and the date of possession is ordinarily controlling. However, if the purchaser can show that he received title before possession, the date on which the purchaser received title is controlling. 8/4/67.

585.0240 Trailers—Sales for Resale. A seller of boats and trailers, who has a valid seller's permit, may purchase the trailers ex-tax for resale, even though the trailers are vehicles of a type subject to registration and the seller is not a dealer licensed by the Department of Motor Vehicles. 11/3/65.

585.0260 Transfer to Contest Winner. There is no tax due on the transfer of an automobile to a contest winner when sales tax has been paid on the prior transfer of the automobile to the promoter of the contest. The transfer to the contest winner is not a taxable sale because the automobile is acquired by chance or skill, and there is no use tax liability because the automobile is received as a gift or premium rather than a purchase. 8/1/67.

585.0270 Transfer to Living Trust. An owner of a vessel registered with the Department of Motor Vehicles, who wishes to transfer the vessel into a revocable family trust in which he is both the trustor and the trustee, is liable for use tax measured by the sales price of the vessel.

A trust is a "person" as defined by Revenue and Taxation Code section 6005. As such, the purchase of a vessel by a trust from a non-dealer is subject to use tax measured by the sales price of the property. If there is no measurable sales price, the use tax would not be due.

Where a bank is the secured lienholder and there is an outstanding loan on the vessel payable to the bank, and the owner transfers the vessel to the trust and continues to make the payments on the loan from his own funds, use tax would not apply to the transaction, because the transfer to the trust would be for no consideration. On the other hand, if the owner in addition to transferring the vessel to the trust, also transferred his checking account to the trust, and the payments on the outstanding loan were made from trust funds, use tax would be due to the extent of the amount paid by the trust for the vessel. 5/30/91.

585.0275 Transfer to Revocable Grantor Trust. An individual intends to transfer the ownership of an aircraft to a revocable grantor trust of which that individual is both the grantor and trustee.

If a donation of the aircraft to the trust is for no consideration, the transaction would not be subject to use tax. However, if the trust provides a consideration in exchange for the aircraft (e.g. assumption of liability for an outstanding loan) the use tax would apply measured by the consideration paid by the trust. 3/25/92.

585.0278 Transfer of Stock for Interest in Aircraft. A taxpayer owns 50% of the outstanding stock of a Subchapter S Corporation. The Corporation's sole asset is a Cessna aircraft. The Corporation is not in the business of selling aircraft. The taxpayer wishes to exchange his 50% stock ownership in the Corporation for a 50% direct interest in the aircraft. The aircraft would be registered showing the taxpayer as co-owner

of the aircraft along with the Corporation. The reason the taxpayer desires the transfer is to facilitate the subsequent sale of his 50% interest in the aircraft to a third party, who has no interest in investing in the Corporation. The taxpayer will use the aircraft prior to selling his 50% interest to the third party.

There is a sale of the 50% interest in the aircraft to the taxpayer by the Corporation. Fifty percent stock ownership in the Corporation is something of value at the time of the transfer and constitutes consideration. The taxable sales price is the value of that consideration and any other form of consideration (e.g., assumption of liabilities). Since the Corporation's sole asset is the aircraft, the value of the shares transferred would be equivalent to 50% of the value of the aircraft. Thus, use tax would be measured by 50% of the value of the aircraft. The taxpayer's subsequent sale of the 50% interest in the aircraft to a third party will be subject to use tax, measured by the sales price. 10/21/96.

585.0280 Transfer to Subsidiary from Parent Corporation. Transfer of a used vehicle by an out-of-state parent corporation to its California subsidiary for a consideration was subject to use tax because the transfer was a sale between two separate and distinct entities and the vehicle was transferred for use in California. 5/25/70.

585.0283 Transfer of Vehicle to Co-Signer. The transfer of title to a motor vehicle for a consideration from the registered owner to a person who was co-signer of the note for the purchase of the car is a retail sale by a retailer pursuant to section 6275. A co-signer is not a co-owner unless so designated on the ownership documents, and the transferee must pay use tax upon registering the car (unless the sale is nontaxable as in an intra-family transfer pursuant to section 6285). The measure of tax is the amount of the assumed liability plus the amounts, if any, that the co-signer agrees to pay the owner for the owner's equity in the vehicle.

There are circumstances, however, under which the payment of the loan by the guarantor will not result in assessment of tax even if that guarantor obtains the vehicle. When the purchaser defaults on the loan and the bank demands payments be made by the co-signer, the bank generally arranges to transfer title to the vehicle to the guarantor/co-signer who makes payments. In this situation, there is no sale since the bank is the one effecting the transfer of title under its power to collect payments from co-signer under the loan agreement and co-signer has not paid any consideration to the bank that the bank was not already entitled to from co-signer. 9/16/75; 10/10/97. (Am. M98-3).

585.0290 Truck Tractor—Use of. So long as the transaction otherwise qualifies, the exemption provided for in section 6388 is not lost by the purchaser carrying a load in the new vehicle during the course of its journey outside the state. 9/30/71.

585.0317 Used Vehicles Modified for Handicapped. The sale of a used vehicle which has been previously modified for a physically handicapped person, to another handicapped person continues to enjoy the partial exemption provided by section 6369.4. The person registering the vehicle with the Department of Motor Vehicles has the responsibility of proving the value of the exempt portion of the vehicle, since section 6369.4 exempts only the modified portion. 9/5/85.

585.0320 Use Outside State of Vehicle Purchased in California. Sales tax reimbursement paid at the time of purchase of an automobile should be refunded to a buyer who takes delivery of, and uses the vehicle outside of California for five months before returning to the state, even though the buyer pays the California vehicle registration fee at the time of the sale in California. The automobile, having been used outside the state for longer than the 90-day period specified in section 6248, is presumed not to be purchased for use in California. 4/3/69.

585.0330 Use Tax Paid to Yacht Broker. Use tax was charged and collected by a yacht broker (holder of a seller's permit) on a sale of a yacht (documented vessel) in which the yacht broker was a true broker and not a retailer of the yacht. The individual who owned the yacht and actually made the sale did not hold a permit for the sale of vessels.

In such a case, the purchaser is required to report and pay the use tax measured by the sales price directly to the Board. However, when money is collected by a broker (a retailer from a purchaser) under representation that it is payment of tax, that money constitutes a debt owed to the state by the broker. Hence, the Board could seek payment from the yacht broker for the money he collected from the purchaser. If any such amounts were collected from the broker, they would be applied to the purchaser's liability for use tax. (Section 6204.) 12/4/95.

(Note: Subsequent statutory change effective January 1, 1996. See sections 6202 and 6283.)

[585.0350](#) **Vessel Skipped by Owner.** When it is a condition to leasing a 35-foot sailboat that the owner (lessor) "skippers" the boat, the boat owner is providing transportation services to the customers. The chief characteristic of a renting or leasing is the giving up of possession to the hirer, so the hirer and not the owner uses and controls the rented property (*Entremont v. Whitesell*, 13 Cal.App.2d 290 citing Civil. 1925, 1955). When possession, custody, and license to use equipment remains totally in the hands of the owner or his employees, such a transaction is not a lease for sales and use tax purposes.

Therefore, the taxpayer does not have the option to report and pay use tax on lease receipts. Use tax is due on the total purchase price of the sailboat. 1/29/88.

585.0394 **Substantially Same Ownership.** Some divisions of Company A are engaged in selling activities requiring the holding of a seller's permit. The transfer of all the assets, including all the vehicles, of a nonselling division of Company A to an existing corporation wholly owned by Company A does not qualify for the section 6281 exemption. section 6281 requires that substantially all the assets held or used in the course of "business activities" be transferred in their entirety (substantially all of Company A assets, not just the assets of one division). 9/14/84.

585.0460 **Fleet Purchases—Companies as Agents for Employees.** Vehicles purchased by companies under their fleet purchasing power are not subject to use tax when the registration is transferred from the company's name to the employee's name if sales tax was paid by the dealer making the sale. Here, the employee actually pays for the vehicle, makes all financing arrangements, and takes delivery directly from the dealer. The company, in such cases, is acting as an agent for the employee when it makes the purchase on the employee's behalf. 11/23/64. (Am. 2003-3).

585.0480 **Historical Value Vehicles.** Vehicles of "historical value," those which were manufactured prior to 1922 and for which special "horseless carriage" license plates have been issued are subject to use tax at the time of registration if it is purchased from other than a dealer, manufacturer, or dismantler just as any other vehicle that is required to be registered under the Vehicle Code. 12/20/63; 1/21/72.

[585.0500](#) **Insurance Company Sale of Salvage Auto.** The sale at retail of salvage automobiles to nondealers is not subject to sales tax but will be subject to use tax upon registration of the vehicle by the owner. If the purchaser has no intention of registering the vehicle, tax should be collected by the seller. 1/28/64.

585.8000 **Vessel Delivered Outside of California.** A California retailer of vessels enters into a contract with a California resident for the sale of a customized vessel and delivery at an "offshore delivery point." Provisions of the contract of sale require several partial payment deposits with the final payment due and payable after Buyer's final inspection and acceptance of the vessel at the "offshore delivery point." Seller's right to retain the deposits are contingent upon Buyer's acceptance of the vessel after final inspection. The risk of loss remains with the Seller up to the "final inspection and delivery" to Buyer. Possession and control is to remain with Seller prior to delivery of the vessel to Buyer. No title clauses are expressed in the contract. Under Uniform Commercial Code section 2401 and Regulation 1628(b)(3)(D), absent a contractual provision that title passes prior to delivery, title passage occurs at the time seller completes its duties with respect to physical delivery of the property. Under these circumstances, the sale of the vessel occurs outside California and, thus, is not subject to sales tax.

As long as the vessel is delivered outside of California, is first functionally used outside of California, and is functionally used in excess of 90 days outside of California, prior to any entry into California [see note below], the Buyer's subsequent California use, if any, will not be subject to California's use tax. If the vessel is delivered outside of California and enters California waters within 90 days after purchase, the Buyer will be subject to use tax unless the vessel is used or stored outside of California one-half or more of the time during the six months after the vessel entered California waters. 7/9/97. (Am. 2006-1; Am. 2008-1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)