STATE OF CALIFORNIA

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STATE BOARD OF EQUALIZATION
450 N STREET - SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE: (916) 445-3723
FAX: (916) 323-3387

May 16, 1997

Mr. H--- M. T---, Jr.
T--- & F---
Attorneys at Law
XXXX --- Boulevard, Suite XXX
---, CA XXXXX

Dear Mr. T---:

This is in response to your letter of May 13, 1997.

You have asked us to consider the sales and use tax consequences of the Third Amended Settlement Agreement in the matter of Wolf v. Toyota Motor Sales, U.S.A., Inc., Action No. C-94-1359-MHP, in the United States District Court for the Northern District of California.

Basically, the collective plaintiffs in this class action are to receive certain discount coupons in satisfaction of their claims against the collective defendants, which included the Northern Toyota Dealers Advertising Association. The action was occasioned with respect to certain advertising rebates paid by the advertising association to individual dealers.

Pursuant to paragraph 7.a. of the agreement, each member of the Plaintiff Settlement Class is to be mailed one (1) discount coupon for each Toyota motor vehicle purchase or leased during the settlement class period.

Each coupon shall be redeemed for one hundred fifty dollars ($150.00) for vehicle purchase or lease; or, if the person receiving or holding the coupon so elects, fifty dollars ($50.00) may be redeemed for parts or service, leaving the remaining one hundred dollars ($100.00) available for redemption in a vehicle's purchase or lease.

The redemption for parts or services is applicable in any service job costing one hundred twenty dollars ($120.00) or more.

The coupon is not transferable, except that the coupon may follow ownership of the vehicle.

The coupon must be used within one year after the date of mailing.

The coupon may be used at any settling dealer, which is a member of the same Toyota dealer advertising association (TDA)to which the plaintiff's original selling dealer belonged.

Paragraph 7.a. closes with a recital that selling dealers within any TDA, among themselves and/or with the TDA, may reach internal arrangements concerning the costs of redemption, including, if desired, an arrangement for the TDA to defray all or part of said cost.

When you and I discussed this matter by telephone, we focused on the issue of redemption of the coupon in a transaction involving a sale of parts (taxable) and services (nontaxable). It is apparent to us now, however, that the question is a larger one--how does the tax apply when the coupon is used to purchase a vehicle and a one hundred fifty dollar ($150.00) credit is given?

As we discussed by telephone, the State Board of Equalization generally recognizes two classes of coupons--retailer coupons and manufacturer coupons. Where a retailer issues a coupon redeemable at its business location for property sold by it, the coupon amount is treated as a nontaxable reduction to the retail selling price. Where the retailer redeems a manufacturer's coupon, the coupon is taxed at its face amount, because the retailer receives a payment directly from the manufacturer, which payment is related to the retail sale of the property in question.

In the case presently before us, it is our view that the coupons in question are in the nature of third party coupons, notwithstanding the fact that the individual dealer may be a party to the settlement. The coupon derives its value from the settlement agreement and does not reflect a voluntary reduction in the selling price of the property on the part of the retailer. In addition, it is contemplated by the agreement that the cost of redemption may be shared in whole or in part by the TDA. For these reasons, it is our opinion that the coupon represents taxable gross receipts. Tax would apply to the one hundred fifty dollar ($150) amount, if the coupon is used in connection with the purchase of a vehicle. Tax would apply in the service transaction context to the full list price of the parts on the invoice.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr