

M e m o r a n d u m**330.3620**

To: Oakland – Auditing (RLM)

Date: December 20, 1968

From: Tax Counsel (JKM)

This is in reply to your memo dated October 7, 1968.

You state that taxpayer is acquiring lease vehicles ex tax under resale certificates and reporting all lease income as the measure of tax. At the present time, automobile manufacturers are issuing rebates to taxpayer based upon the number of new vehicles placed in lease service. Taxpayer is receiving a rebate of \$50 per vehicle from both “X” and “Y”, and from \$10 to \$100 per vehicle from “Z”. The rebates are issued by the manufacturer either directly to taxpayer or to the selling dealer who then issues them to taxpayer.

In the majority of transactions, taxpayer has treated these rebates as additional lease income by crediting the amounts received directly to the lease income account with the lessees deriving no benefit therefrom. These amounts have been reported as taxable lease income. In other transactions, taxpayer has given lessees credit for rebates by applying the rebates to the lessees’ deposit account, an account taken into consideration in computing the lease termination settlement after a lease vehicle is sold. At that time additional charges or credits may be due under the lease agreement.

You ask if these rebates should be treated as additional lease income subject to tax or if they should be treated as a reduction in the cost of the lease vehicles and not subject to tax.

From your memo, it appears that taxpayer receives these rebates because of its purchases of vehicles for placement in lease service rather than because it leases the vehicles to certain customers. Under these circumstances, where taxpayer receives rebates and retains them for its own use, with the lessee deriving no benefit therefrom, or applies them to lessee’s deposit account, we would regard these rebates as reductions in taxpayer’s cost of acquiring the lease vehicles and not as additional lease income. Thus, these rebates would not be reported as taxable lease income and would not be subject to tax. In those cases where taxpayer gives lessees credit for the rebates by applying them to lessees’ deposit account, taxpayer is, in effect, modifying the lease agreements by altering the provisions relating to the deposit account.

JKM:ss [lb]