



490.0300

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

April 19, 1954

REDACTED TEXT

Your letters of March 8
and April 8

In December 1953 you purchased a new Pontiac from REDACTED TEXT Pontiac, REDACTED TEXT, Monterey Park. You ordered an automobile with a Hydramatic transmission, but the one which was delivered had a Power Glide transmission. It was several days before you discovered this but upon discovery you immediately informed the dealer. He told you he would correct the situation but it would take a little time and finally delivered to you a used automobile of the same year and model and with a Hydramatic transmission.

With the consent of all parties concerned, the original conditional sales contract was altered so that it covered the second automobile rather than the first. The total sales price was unchanged. No charge was made to you for the substitution of automobiles except that the dealer had billed you \$97.81 which he claims is due as sales tax on the transaction.

The application of sales tax to returned merchandise is governed by Ruling 64 (copy enclosed). As indicated therein, tax does not apply if merchandise is returned and the customer receives credit for the full sales price including that portion designated as "sales tax". Since the first car was returned, the dealer will be entitled to a returned merchandise deduction on his return if he credits you with the full sale price including the amount charged for "sales tax". The transfer to you of the second automobile is, of course, a taxable transaction but, because the agree selling price is unchanged, the tax on the second transfer is the same as the amount of tax charged and paid on the original transfer.

In summary, the second transaction is taxable, but, at the same time, the retailer is entitled to a returned merchandise deduction which will exactly offset the tax on the second transaction. But the dealer is not entitled to his returned merchandise deduction if he insists on charging you \$97.81 tax on the second transfer and if you actually pay it.

We return the car order which was used by the dealer in connection with the exchange of the automobiles.

Yours very truly,

Bill Holden
Assistant Counsel

BH:ja

cc: Pasadena – Auditing