



STATE BOARD OF EQUALIZATION

October 22, 1971

H--- and C---
P--- & Company
Certified Public Accountants
XXX --- ---
--- ---, California XXXXX

Attention: Mr. B--- N---

Dear Mr. N---:

This is a further response to your letter of July 16, 1971, which was referred to the undersigned for reply. In our telephone conversation of September 30, 1971, I informed you that my letter opinion dated September 23, 1971 should be considered a provisional reply pending our further consideration of your inquiry. This letter is intended to finalize our reply and overrules my September 23, 1971 letter in regard to the sales tax consequences of the \$25 deductible charge involved in your inquiry. If you have discussed my September 23, 1971 letter with your clients, please inform them of this final opinion.

You refer to a previous ruling by Tax Counsel J Kenneth McManigal, dated May 10, 1968, which determined that where a new car warranty was transferred to a subsequent owner within the warranty period, neither the transfer fee nor the replacement parts furnished pursuant to the warranty were subject to sales or use tax.

Recently, the manufacturer has changed the warranty terms so that on subsequent transfer by the original owner, the warranty only covers warranty work exceeding \$25 in cost.

You request a ruling concerning the sales tax consequences of the following transaction:

The second owner takes the car to a repair shop for work covered by the original warranty. The work performed costs \$150. The owner of the car pays \$25 and the balance is billed to the factory. Replacement parts are included on the invoice at a 25 percent markup. What amount, if any, is subject to sales tax?

As Mr. McManigal discussed in his ruling of May 10, 1968, new car warranties are an integral part of the sale of a new automobile and are, in effect, a mandatory warranty within Regulation 1655(c), copy enclosed.

The \$25 transfer fee and the \$25 deductible clause are specific provisions of the original warranty. It is the opinion of this office that it is the unexpired portion of the same warranty that is available to the second retail purchaser.

Therefore, we agree with your conclusion that the unexpired portion of the warranty is a continuation of the original mandatory warranty. The amount billed to the manufacturer for parts will not be subject to sales or use tax as the parts will be considered as purchased at the time of the original sale (Regulation 1655(c)2)).

In our opinion, the pro rata portion of the \$25 deductible charge allocable to parts is subject to sales tax. The original warranty contemplates that to the extent of the \$25, parts will not be furnished free of charge to the second retail purchaser. Instead, the second retail purchaser is purchasing parts and labor to the extent of \$25.

The \$25 warranty transfer fee is not subject to sales tax as the transfer of the manufacturer's obligation is not a sale of tangible personal property.

If you have further questions on this matter, feel free to contact the undersigned.

Very truly yours,

Donald J. Hennessy
Legal Counsel

DJH:lb
Enclosure