

M e m o r a n d u m

570.0425

To: Mr. P. M. Fiorino

Date: June 24, 1976

From: Glenn L. Rigby

Subject: DMV Accounting for Use Tax

In your memo of June 16 you asked our opinion as to whether or not DMV's proposed procedure of rounding off a purchaser's use tax liability to the nearest dollar is legally correct.

Although there is no statutory provision under the Sales and Use Tax Law which allows such a procedure, there is such authorization under Section 4750.5(d) of the Vehicle Code.

This section provides:

"In computing any use tax or penalty thereon under the provisions of this section dollar fractions shall be disregarded in the manner specified in Section 9559 of this code. Payment of tax and penalty on this basis shall be deemed full compliance with the requirements of the Sales and Use Tax Law insofar as they are applicable to the use of vehicles to which this section relates."

Section 9559 provides:

"In computing any registration or weight fee or penalty imposed by this code, whether on a proration or otherwise, a fraction of a dollar is disregarded, unless it exceeds fifty cents (\$.50), in which case it is treated as one full dollar (\$1). Computation of any penalty shall be made from the fee after the same has been computed as provided in this section.

Any fee or penalty in an amount of fifty cents (\$.50) or less shall be deemed to be one dollar (\$1)."

Assuming DMV follows the above referenced statutory provisions concerning rounding off, such a procedure would be legally correct.

The only item that gives us some pause is that DMV allows banks and financial companies, i.e., non-dealers, to collect and report the purchaser's use tax directly to DMV. Under Section 6292 of the Revenue and Taxation Code such a collection is prohibited. The only legal base we can see for such a collection procedure would be a finding that the banks and financial companies were acting as the purchaser's agent.