



STATE BOARD OF EQUALIZATION

January 19, 1972

Reference is made to your memorandum dated January 11, 1972 regarding the above-referenced company.

_____, for years, has been in the business of leasing automobiles. Frequently, the lessee would purchase the car being leased. The Department of Motor Vehicles did not and does not require a dealer's license for this type of operation.

In 1968 the firm did obtain a used car dealer's license in the name of _____. It provides an outlet for the retail sale of used (formerly leased) vehicles.

We understand that it has been the position of the Department of Motor Vehicles that _____ could continue to sell their leased vehicles to or through the lessees without going through the dealership or preparing a report of sale. In these instances, the leased car is not returned to the leasing company. If the car is returned and then sold to someone else, you would require a report of sale.

The Board of Equalization does not require that _____ pay sales tax on retail sales of vehicles where your Department does not require a dealer's report of sale on the transaction. Vehicles sold directly to the lessee who has been leasing it and on which no report of sale is required by your Department are subject to use tax which should be collected by your Department when the purchaser applies for transfer of registration.

It is our position that transactions wherein the Department of Motor Vehicles does not require a report of sale are transactions for which no dealer's permit is required and accordingly, sales under those conditions are not made by a person in his capacity as a dealer certificated by the Department of Motor Vehicles.

We were confronted with a situation similar to that in the _____ case in an audit of the _____.

Following is an extract from a memo from H. F. Freeman to Senator Cologne dated July 10, 1970:

“As you are aware, the Department of Motor Vehicles is not requiring a dealer's report of sale on the vehicles used in _____ bus service, considering it to be a separate operation. In view of this fact we agree that _____ is not required to pay tax on the sale of any vehicles sold by the _____ upon which a dealer's report of sale is not made as long as they are subject to registration by the new owners with the Motor Vehicle Department. In these cases the purchasers are

liable for the use tax to the Department of Motor Vehicles. We intend to prepare a reaudit and eliminate the above noted sales.”

The decisions as to who must be a certificated dealer and who must not or which transactions are deemed not to require a dealer’s report of sale in the case of persons who do hold a dealer’s license are ones for the Department of Motor Vehicles to make, and rightfully so since that agency administers the provisions of the Vehicle Code.

While some of our people may not think some sales should go unreported, I believe we are bound to your administrative decisions. The key to the question of whether sales or use tax applies is whether a given sale of a vehicle is made by a person in his capacity as a licensed dealer or in some other capacity. If it is made in the capacity as a licensed dealer, you require a report of sale and the law requires that he pay sales tax on the sale. On the other hand, if it is not made in his capacity as a license or certificated dealer, the law does not require that he report and pay sales tax on the sale. Instead, the purchaser must pay the use tax.

We are sending a copy of this memo to our Inglewood office that made the audit of _____.

Thank you for calling this to our attention.

RHA:lb

cc: Los Angeles Dist. – Dist. Admin.
Inglewood – Auditing (RP)
W. Los Angeles – Auditing (SW)
Mr. Robert Nunes
Mr. Glenn L. Rigby