

MAINE STATE LEGISLATURE

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October 31, 1951

To Ernest H. Johnson, State Tax Assessor
Re: Sales Tax on Demonstrators.

You ask whether there is a sales tax on a sale of a demonstrator by a dealer to a salesman. The salesman uses the demonstrator for six months, more or less. When a customer wants that car, the salesman sells it back to the dealer, who then sells it to the customer with a new-car guaranty but at a reduced price. You ask whether the original sale to the salesman is subject to the sales tax.

This sale differs from some others in that it is primarily for resale. However, the automobile is in all respects that of the salesman. He may use it for personal errands and for vacation trips, however extensive. He insures the car in his own name, not the dealer's. Necessarily, the car must be a new model in the case of any dealer who is selling new cars.

Section 2 of the Sales and Use Tax Law defines a retail sale as being for any purpose other than resale. A retail sale must be "for consumption or use". "Use" is defined to include the exercise in this State of any right or power over tangible personal property incidental to its ownership when purchased by the user at retail sale.

Like all other situations, we should view this one in the light of all other similar situations. Unquestionably, every car is bought for resale among other things. The cost of ownership is diminished by whatever turn-in value may ultimately be received. In some situations, the resale value is more important than in other situations. If one attempts to make "primary purpose" the test, there is no way of drawing a line to distinguish the case where purchase for use is the primary intent and the case where purchase for resale is primary. Some automobile salesmen work part time. For them, their car affords them transportation not only for the purpose of demonstrating cars but for taking care of the other business or businesses in which they are engaged. Taxable "use" means use in Maine. A salesman who lives near the Maine boundary may have a route which causes him to drive very little in Maine and a great deal outside it. Circumstances change so that a car bought primarily for use outside Maine may actually be used mostly in Maine. The salesman of automobiles may leave that position and work with some other business. To police any rule involving "primary use" would be fraught with difficulties from start to finish, including the original difficulty of stating the rule.

It is my opinion that a car sold to a salesman of automobiles is his car and should, therefore, be deemed bought for "consumption or use". Both vendor and purchaser anticipate that he will use the car as he pleases. It is registered and insured in his name.

You next inquire about the dealer who uses a new car for demonstration purposes rather than selling it to a salesman. Unquestionably, a great many new cars held by the dealer for sale are used for demonstration purposes. At the least, the customer may be invited to sit

in the car as it stands on the showroom floor. Perhaps the car will be taken from the floor and driven for a short ride. Perhaps the customer will be loaned the car for a part of a day, a day, or perhaps a longer period. Section 19, Chapter 19, R. S. 1944, provides that "a vehicle loaned by a dealer to a customer for demonstration or emergency purposes may be operated on the dealer's registration plates for not more than 7 consecutive days." Obviously, where a customer simply sits in the car as it rests on the showroom floor, the dealer's use of the car is so trivial that we should overlook it. It seems to me within the Assessor's powers to define what is so small a use that it should be overlooked and to define a taxable use. My suggestion in this respect is that as long as the car retains its dealer's plates, we should deem the use non-taxable. I refer, of course, to new cars held for sale and not to tow trucks used regularly by the dealer for servicing automobiles. I believe that the only way we have of policing the act is to accept the standards set out by the Bureau of Motor Vehicles, which, in turn, are reflected by registrations. This, however, is an administrative matter.

Further answering your second question, if the use made of the car is so extensive that it is reasonably "use or consumption", the dealer should pay a use tax on the actual cost of the car to him. When he eventually sells the car, there will be a sales tax.

Boyd L. Bailey
Assistant Attorney General

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