STATE OF MAINE AN INFORMAL OPINION

Inter-Departmental Memorandum Date June 25, 1974

To Robert Beattie, Chief Examiner Dept. Bureau of Taxation

From Donald J. Gasink, Asst. Atty. Gen. Dept. Bureau of Taxation

Subject Trade-ins between Chrysler Leasing and Chrysler Motors

Based on the facts presented in the memo from Ronald Malone and on the contracts between the two corporations, I conclude that the "trade-ins" from Leasing to Motors in the form of sales by Leasing on behalf of Motors to Chrysler dealers through "Recon Centers" are not valid trade-ins.

Preliminarily, I should point out that my analysis is based on the assumption that both contracts (May 27, 1971 and December 16, 1971) are in force. Mr. Mead's letter appears to support this assumption. I mention this in passing only because the December 16 agreement, in section 20, indicates that all prior agreements for leasing are terminated, which might have included the May 27 agreement.

My conclusion that the "trade-ins" are invalid results from my interpretation of the contract and because the facts do not conform to the contract.

By the requirements of the May 27, 1971 contract, the following is to have taken place or is relevant in a trade-in situation:

1. Leasing delivers to Motors for each trade-in "a properly executed Certificate of Title, duly assigned to Dealer (Motors) or its nominee or agent." (V. B.)

2. Leasing, apparently via inventory and control records, accounts to Motors for each trade-in. (V. C.)

3. Delivery is effective "upon the transfer of a properly executed Certificate of Title assigned to Dealer (Motors) or its nominee or agent." (Misc. Prov. B.)

4. Physical delivery is contemplated, both in Misc. Prov. B. and in III. B.

The reconditioning centers are run by Leasing, I assume. I assume this because of the wording in Ronald Malone's memo and because of section 7 of the December contract. So the trade-in vehicles in question are not physically delivered as is contemplated in the May contract.

Given that the vehicles are not delivered as required in the first contract, the issues are (1) whether the December 16, 1971 contract has been complied with so that Leasing can sell on behalf of Motors, without physical delivery to Motors, and (2) what effect the December contract was to have on the May contract's requirement that the Certificate of Title be properly executed to show transfer to Motors or Motor's nominee or agent.

(1) Whether the December 16, 1971 contract has been complied with so that Leasing can sell on behalf of Motors without physical delivery to Motors:

As relevant to the trade-in issue, the December contract contemplates purchases of vehicles by Leasing from Motors. Section 6 of the contract does not involve sales of vehicles which have been owned by Leasing and hence is not relevant. Section 7 is the only applicable provision.

Section 7 gives Leasing the power to sell vehicles which would have been traded-in to Motors on behalf of Motors only "at Motor's request." Then, Leasing must send the proceeds to Motors. The section is silent as to what the Certificate of Title is to indicate.

First, the information given by Mr. Malone does not indicate that Motors makes the required request. At present, and until requests from Motors are proven for each trade-in claimed under this section, I would not advise recognizing any of the sales-instead-of-physical-delivery transactions as valid trade-ins under Maine law. Also, Mr. Malone's memo does not mention that the proceeds are or are not sent to Motors.

(2) What effect the December contract was to have on the May contract's requirement that the Certificate of Title be properly executed to show transfer to Motors or Motors' nominee or agent:

Difficult issues present themselves here. The December contract in section 22 apparently means that Michigan law is to be used in interpreting the impact of the December contract on the May contract. I do not have even the faintest notion of what Michigan law is on the interpretation of two contracts of this

nature. My conclusion is that the Bureau should assume that the Certificate of Title requirements are applicable, even though modified by the December contract, and that there should be some notation in the Certificate about a transfer to Motors by Leasing and then a Motors' assignment to Leasing for purpose of sale before the auction sale actually takes place. Even the latter assignment on a Certificate might be questionable since section 21 of the December contract says that Leasing cannot be an agent, and Michigan law on assignments versus agency should be known.

Since I think the Certificate is the crucial document, the sample invoice is irrelevant. Even if the invoice were important, the assertion about the assignment on the invoice only makes sense if the vehicle was physically delivered to Motors. With physical delivery it would be necessary for Leasing to transfer its interest to Motors so that Motors could sell it. If the vehicle is sold by Leasing for Motors, the assignment does not make any sense, since Leasing has title before the assignment and Leasing is supposed to be doing the selling for Motors - but the invoice does not say anything about Leasing's power to sell for Motors. All of this is irrelevant, anyway, since Mr. Malone indicates that Leasing has full title on the Certificate when the vehicle is sold to the buying dealer.

As summary: I have focused on two elements that lead me to advise the Bureau not to recognize these transactions as valid trade-ins. First, there is no evidence of requests by Motors to have Leasing sell the cars. Second, the Certificate of Title never shows a return of any ownership to Motors before the auction sale.

Since these contract provisions have apparently not been complied with, I do not think the transactions should be recognized as trade-ins. Had the contracts been fully complied with, then it would be a Bureau decision as to whether to recognize contracts of this nature. I might also add that 36 M.R.S.A. §1765 is rather brief, but "taken in trade" could support a position that only would recognize as valid a trade-in involving physical delivery.

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