

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-3723

February 24, 1989

Ms. S--- P---
S--- Company
XXX --- Avenue
--- ---, NY XXXXX

Dear Ms. P---:

The California State Board of Equalization administers the California Sales and Use Tax Law. It has come to our attention that in your publication, "S--- P---'s P--- F--- XX Car Buying Guide" of October 1988, you have commented upon application of the California tax to retail sales of automobiles, where manufacturers' rebates may be offered to consumers.

We believe there may have been a miscommunication between your office and this agency. Specifically, on page 36 of your publication, there is an article authored by B--- C--- suggesting that the State Board of Equalization has adopted a compromise position with respect to application of the tax to manufacturers' rebates. In fact, while we distinguish between dealer incentives and allowances on the one hand and manufacturers' consumer rebates on the other hand, we include manufacturers' consumer rebates in the measure of sales tax in all instances.

Manufacturers may make incentives or allowances directly to dealers to promote sales of new cars. The incentive is an inducement to the dealer to sell and is payable in the form of a discount on the cost of the vehicle to the dealer. The allowance may be a year-end close-out allowance based on unsold units. The assistance may take the form of incentive price assistance to enable the dealer to bid against competitors. The manufacturer may offer government price concessions or fleet incentives. In all of these cases the incentive or allowance is an inducement to the dealer and results in a reduction of the cost of the vehicle to the dealer. That is, there is a price adjustment between the manufacturer and a dealer as to the wholesale price of the vehicle. The actual amount of factory incentives or allowances or holdbacks may not be disclosed to consumers. In some cases, such incentives or allowances may be passed on dollar-for-dollar to the consumer and may be disclosed to the consumer whether there is disclosure or not. The incentive results in a reduction in the taxable retail selling price of the vehicle, and the measure of sales tax is thus reduced.

In other cases, manufacturers offer incentives to the consumer in the form of a manufacturers' rebate. The manufacturers' rebate is an inducement to the consumer to purchase and is a credit available to be taken as cash or to be applied against the selling price of the vehicle. The consumer may assign the credit to the dealer. Under the California Sales and Use Tax Law, "gross receipts," the measure of the sales tax, includes any amount for which credit is allowed by the dealer. The dealer collects the amount of the rebate from the manufacturer pursuant to the assignment made to the dealer by the consumer. Consumer rebates are subject to tax in all instances. The consumer rebate may be identified as an additional down payment but, in some cases, the consumer rebate may be subtracted directly from the cash price of the vehicle. In both cases, the amount of the rebate is fully subject to tax. Thus it is not correct in California that "...if the rebate is taken off the purchase price by the dealer, the buyer is taxed only on the net amount," as suggested in the article in question.

We regret any misunderstanding that may have occurred. We have been unable to locate from our files your source of information at this agency. We would be happy to communicate with you further on this subject, if you believe further communication is necessary or desirable. Our telephone number in Sacramento is (916) 445-3723. Our mailing address is: State Board of Equalization, P. O. Box 942879, Sacramento, CA 94279-0001.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr