



STATE BOARD OF EQUALIZATION

November 27, 1951

[X]

Attention: [X]

Gentlemen:

This is in answer to your letter of September 13 with reference to the proper basis of computing sales tax with respect to demonstrator automobiles which are assigned to salesmen to be used for purposes of demonstration and incidental personal use for which a charge of \$30.00 per month is made to the salesmen for rental. You inquire whether the amount of rental charge is adequate or is only a token rental and whether the dealer may include in the measure of tax paid by him the amount of rentals charged rather than the purchase price of the property.

It appears to us that, although \$30.00 per month rental for these cars is rather low, it is not so low that we would be justified in ignoring it as in the nature of a "token" rental. It is, therefore, our opinion that sales tax may properly be computed upon the \$30.00 per month rental as contemplated in the third paragraph of Ruling 69.

You also inquire respecting the furnishing of automobiles to high schools for use in their driver training programs "As a matter of public policy, is it your opinion that such use should constitute taxable use by the dealer?" We are not in a position to express an opinion on this point "As a matter of public policy". It is, however, our opinion that, as a matter of law, such use clearly results in tax liability on the part of those dealers furnishing automobiles to high schools for use in driver training programs if the automobiles were purchased by the dealers without tax for resale. Under the provisions of Section 6007 of the Sales and Use Tax Law a retail sale means a sale for any purpose other than resale and Section 6009 defines use to include the exercise of any right or power over tangible personal property incident to the ownership of that property, except sale in the regular course of business. therefore, it appears clear that the furnishing of the automobiles to schools for use in driver training programs constitutes a use such as renders the sale of the cars to the dealers a retail sale or sale for use with respect to which sales tax or use tax, as the case may be, is applicable. Whether an exception should be made with respect to cars furnished for driver training programs is a matter for legislative determination rather than for the determination of an agency charged with administering the law. As we have stated, it is our opinion that the law is quite definite in this regard and does not permit of any administrative determination that the furnishing of automobiles for use in driver training programs does not result in tax liability.

You also inquire concerning the application of tax to amounts designated on invoices as overallowances shown by the symbol "OL" where there is a trade-in taken as a part payment. While it is true that a discount is not a part of gross receipts subject to tax, we do not believe that

the amount designated as an overallowance may be excluded upon the ground that it is a discount. We note that on a sample invoice immediately following the amount shown opposite the caption "Used car" the "OL" appears to be included under the used car heading. If it were a cash discount, it would presumably appear elsewhere on the invoice. You state that the situation is distinguishable from the facts in the case of *Hawley v. Johnson*, 58 Cal. App.2d 232, on the ground that the customer's invoice clearly shows the allowance for the trade-in and the "overallowance" or "discount." In reading that case, however, it appears to us that the amount described as overallowance would still be held to be within the measure of the tax as to all intents and purposes a part of the agreed allowance for the car turned in. It is stated in that opinion that the statute expressly excludes cash discounts from the tax, but imposes the tax on payments for property "valued in money." It is then stated that the parties by bona fide agreement, having valued the property in money, under the express terms of the statute, have fixed the measure of the tax. It seems to us that while the case put by you may not be as clear as were the facts in *Hawley v. Johnson*, it still falls within the rule of that case in that the parties by agreement have fixed the amount which will be allowed on account of the turning in of the old car, this amount being the sum of the figure shown opposite the captions "Used car" and "OL". If the amount opposite "OL" represents a bona fide discount that would be allowed in the absence of any trade-in, we do not see why it would not be designated as a cash discount on the invoice.

Very truly yours,

E. H. Stetson

cc: Mr. J. S. Knight