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July 12, 1993

BURTON W. OLIVER
Executive Director

Ms. D--- R---
P--- L--- M---
DMV/Contracts
XXXX --- Avenue
--- ---, CA XXXXX

Dear Ms. R---:

Re: Taxability of Mileage Charge

This office has received a letter from you dated June 15, 1993 in which you asked if the mileage charge assessed to the purchase price of a returned vehicle under California's "Lemon Law" is subject to tax.

Civil Code section 1793.2(d) (1) and (2) provide that if the manufacturer or its representative does not service or repair an automobile sold in this state to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the vehicle or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

Civil Code section 1793.2(d)(2)(c) provides that when the manufacturer replaces the new motor vehicle, the buyer shall only be liable to pay the manufacturer an amount directly attributable to use by the buyer of the replaced vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or its agent for correction of the problem that gave rise to the nonconformity. When restitution is made, the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle for correction of the problem. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the vehicle prior to the time the buyer first delivered the vehicle for correction of the problem.

You ask in your letter if the "charge attributable to use" is subject to tax.

If the vehicle is replaced by another automobile, any additional payment made by the buyer "attributable to use" of the original vehicle and/or because the replacement vehicle is more expensive than the original vehicle, will be subject to tax.

If a credit is given to the customer because a replacement vehicle has a lower cost than the original vehicle or because restitution of a purchase price minus the "charge attributable to use" is paid to the buyer, the net credit should be refunded to the customer including the sales tax previously paid on that net credit amount.

Very truly yours,

Thomas Cooke
Tax Counsel

TC:ph

cc: --- --- District Administrator - --
Gordon Adelamn - MIC:82