

M e m o r a n d u m**490.0620**

To: --- --- District – District Principal Auditor

Date: November 30, 1966

From: Tax Counsel (GAT) - Headquarters

Subject: [Car Manufacturer]
P. O. Box XXX
--- ---, CA XXXXX

SZ -- XX XXXXXX

This is in reply to your letter of October 11, 1966, regarding ours of September 30, 1966, to [auto dealer] concerning the new [car brand] warranties.

As indicated in that letter, it was our opinion that, on the basis of the facts submitted, [B], the [car brand] dealer, was the consumer of parts furnished under the 50,000 mile power train warranties. This was based on our understanding that the warranties were optional, were sold by the dealers directly to the customers, and that all expenses incurred by the dealers for parts and labor would be covered by the \$25 initial and \$25 deductible payments made by the purchasers of such warranties.

It is now our understanding that the foregoing is not a correct description of the relationships of all of the parties involved. We understand that each warranty transaction involves three parties, the [car manufacturer], the local dealer, and the customer. It appears that each dealer sells the warranties in much the same manner as an insurance agent sells regular insurance policies for his employer, remitting the \$25 premiums to the [car manufacturer]. When a customer makes a claim on the dealer for service under the warranty, he pays the dealer \$25. The dealer, in turn, does the work, making out a regular invoice for parts plus labor plus 25 per cent markup and submits this to the [car manufacturer] which, in turn, pays the dealer the invoiced amount less the \$25 deductible which the customer paid when he asserted his claim for service.

Under the foregoing circumstances, it appears to us that when the dealer furnishes parts and labor under such warranties and submits the invoice to the [car manufacturer] for payment, he is actually selling the parts and furnishing that labor pursuant to his contractual obligation to the [car manufacturer], as well as to the customer, just as an independent automobile repairman furnishes parts and labor to an insured and his automobile insurance company.

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Principal Auditor
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In view of the foregoing, it is our opinion that dealers furnishing parts and labor under such warranties are retailers of the parts and not the consumers thereof. Accordingly, the tax is applicable to their charges to [car manufacturer] for parts made pursuant to the 50,000 mile power train warranties. These charges would include the 25 per cent markup attributable to the parts.

Inasmuch as the warranties are optional, the initial \$25 payment therefore is not part of the dealer's taxable gross receipts.

GAT:mm

cc: Out-of-State – District Administrator
--- – Subdistrict Administrator