STATE BOARD OF EQUALIZATION

November 25, 1991

Re: Application of Sales Tax to Sales of Automobiles

Dear _____,

Your letter dated September 13, 1991, regarding the application of sales tax to certain automobile sales has been forwarded to me for a response. According to your letter, the facts are as follows:

> "We are in the business of finding cars for our customers at franchised dealers and then selling them to our customers. Most of the time we can purchase the vehicles for resale and not have to pay sales tax and license to the original dealer.
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> "However, some dealers do not wish to sell vehicles for resale and require that we pay sales tax to them directly. In these cases we would register the vehicle to us, _____ and pay tax and license. We would then change the title to our customer's name when we resold the vehicle to them. Transfers of title usually take plan in about four days but sometimes can take about fifteen if the customer can not pick up the vehicle sooner. Our question is, can we take a tax credit for the amount paid to dealers in these cases?
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> "The vehicle is being bought and registered to us then resold to our customer who was the intended purchaser in the first place. The paper work the dealer is requiring us making a single transaction turn into two sales. Must sales tax be collected twice? The sole purpose of our buying the car was to resell it. We will register the car to the customer as a used car."

We assume that you are a licensed dealer under section 285 of the Vehicle Code.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. The tax applies only to retail sales, not sales for resale. Generally the tax is imposed upon the person who makes the sale and transfers title, but with respect to automobiles, an automobile broker is responsible for paying the tax even if the broker does not have the authority to transfer title. Rev. & Tax. Code §6275(b) and Business Law Tax Guide, Sales and Use Tax Annotation 580.0030.

In your case you are responsible for the sales tax on the sales to your customers whether you transfer title or act only as a broker. In all your purchases for resale, you may give the dealer a resale certificate in the form prescribed by Regulation 1668, "Resale Certificates." If a dealer still

insists upon payment of sales tax reimbursement after receiving a resale certificate, you may take a "tax-paid purchases resold" deduction under Regulation 1701, "Tax-Paid Purchase Resold," which provides:

> "(a) A retailer who resells tangible personal property before making any use thereof (other than retention, demonstration or display while holding it for sale in the regular course of business) may take a deduction of the purchase price of the property if, with respect to its purchase, he has reimbursed his vendor for the sales tax or has paid the use tax. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.
>
> "The deduction under the caption 'Tax-paid purchases resold' must be taken on the retailer's return in which his sale of the property is included. If the deduction is not taken in the proper quarter, a claim for refund of tax must be filed."

One important point to note is that you cannot use the vehicles at any time prior to resale except for demonstration, retention, or display. Otherwise, both the dealer's sale to you and your sale to your customer are retail sales subject to tax. In addition, note that the amount of the tax-paid purchases resold deduction on the sales and use tax return is the purchase price you paid to the dealer, not the sales price you charged to your customer.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again but please include your seller's permit number.

Sincerely,

Elizabeth Abreu
Tax Counsel