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**STATE BOARD OF EQUALIZATION**

April 3, 1951

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Attorneys at Law  
XXXX ---  
--- XX, California

Attention: Mr. W--- D.

Account No. K-XXXXXX  
J--- D. H---, M. D.

Gentlemen:

We acknowledge your letter of March 29 in which you state that Dr. J--- H--- knew, when the automobile that he purchased in Illinois was actually delivered to him on October 18, 1950, that he was going to use it in California. You point out, however, that the order had been placed for the car on May 25, 1950, at a time when Dr. H--- had no intention of coming to California.

It is our opinion, however, as we pointed out in our letter of March 9, that the date of "purchase" of the car, which is the controlling date in view of Section 6201 of the Sales and Use Tax Law, is the date of delivery of the car to the buyer unless the buyer is able to establish that he actually acquired title to the car at an earlier date. The mere placing of an order for a car does not constitute an actual purchase of the car, even though it may result in a binding contract under which the person placing the order is bound to make a purchase at a later date.

The Courts have recognized this distinction for purposes of the sales tax. (See *National Ice and Cold Storage Company v. Pacific Fruit Express Company*, 11 Cal. 2d 282.) We believe that it would also be held for purposes of the use tax that the date of purchase is the date of acquiring title and not the date of entering into a contract to make the purchase. (See Section 6010 of the Sales and Use Tax Law which defines "purchase" as "(a) Any transfer, exchange, or barter, conditional or otherwise ... of tangible personal property for a consideration. (b) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price ...")

This has been our consistent administrative interpretation not only with respect to the application of the use tax to automobiles purchase outside the State, but to all property subject to use tax in which the date of purchase differs from the date of the contract to purchase. We, therefore,

regret that we are unable to advise you that your client does not owe the tax. We are, however, pursuant to your request, granting a one month's extension for its payment. Under the extension hereby granted the due date is April 30, 1951. Pursuant to Section 6459 authorizing extensions, interest at the rate of one-half of one per cent per month, or fraction thereof, must be paid in addition to the tax.

Please see that the attached duplicate copy of this letter is attached to your client's tax return.

Very truly yours

E. H. Stetson  
Tax Counsel

EHS:ph

cc: Mr. H. B. H---