

Memorandum

To: San Diego – Auditing (JHMcCl)

Date: December 4, 1958

From: Headquarters – Hearing Auditor

Subject: REDACTED TEXT

We have discussed with the Sales Tax Counsel the various documents in connection with the intended sale to REDACTED TEXT, all of these documents being drawn up on the same date, May 25, 1957.

The “Borrowed Car Agreement”, a photocopy of which was given to us at the recent hearing, shows the intended rental period to be from 5-25-57 to 5-28-57. Your letter of 11-28-58 states that the rental period was from May 25, 1957 to July 20, 1957.

We do not believe this difference is of any special significance. The Sales Tax Counsel states that it does not appear that a sale was effected, assuming that it does not appear that a sale was effected, assuming that the signed “Automobile Agreement” contained the following language (which we have copied from petitioner’s agreement with one REDACTED TEXT):

“Delivery of this automobile is accepted by purchaser subject to credit approval by a financing institution, and in the event of a credit report unacceptable to the financing institution, the purchaser will return the automobile herein described immediately to the dealer.”

The transfer of possession in such circumstances is not regarded as a transfer of possession in lieu of a transfer of title, and the measure of petitioner’s tax liability will be limited to the receipts retained.

With respect to the intended sale to REDACTED TEXT, we believe the measure of tax should be \$450.00 not \$432.00, if \$450.00 was received. As you state, the books show a rental of \$9 per day for 40 days, or \$360.00, but petitioner received \$450.00, of which he reported \$432.00 as taxable. We believe the measure of tax to consist of all the receipts retained by petitioner.

Again, this entire theory is based on the presumption that petitioner bought the cars ex tax under a resale certificate, or outside the State from a retailer.

In the REDACTED TEXT transaction, it would seem that the measure of tax should be \$520.00, not \$500.00, if \$520.00 was received by the petitioner.

W. E. Williams

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