

**STATE BOARD OF EQUALIZATION**

May 21, 1969

Attention: Mr. _____
Assistant Secretary

Gentlemen:

You letter petition for redetermination questions the authority of the board to assess a deficiency measured by the difference between the actual sales price of used vehicles and their fair market value after the Department of Motor Vehicles has required payment of use tax measured by the latter.

In summary, your position appears to be that the action of the Department of Motor Vehicles is conclusive of the measure of tax on the basis of the presumption of section 6276 of the Revenue and Taxation Code, which you assert can only be rebutted by the taxpayer and not by the board, and the phrase "full compliance" in Vehicle Code section 475Q5.

You contend there is a difference between "sales price" in section 6276 and the "purchase price" actually paid by your company and propose an alternative wording for the statute if the Legislature had intended to tax the "purchase price." This contention is baseless. The term "sales price" is used in section 6276 because it is the statutory measure of the use tax imposed by section 6201.¹ "Sales price" is defined in section 6011 to mean "the total price for which tangible personal property is sold..." (emphasis added). "Purchase price" is not a term used by the Sales and Use Tax Law. Indeed, in the sense you use the term, it is the same as "sales price."

We cannot accept your contention that the opportunity to rebut the presumption of section 6276 is available to the taxpayer but not to the board. There is nothing in the statute to so indicate, as it merely states "the presumption may be rebutted by evidence which establishes that the sales price was other than such market value." This rule cuts both ways so that the correct measure is arrived at.

I can assure you that this presumption is not conclusive, that it does not require the board to use the fair market value formula, and that the Legislature did not intend that you should pay tax measured by an amount less than you actually paid when the actual amount is known.

¹. "6201. Imposition and rate of use tax. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on or after July 1, 1935, for storage, use, or other consumption in this state at the rate of 3 percent of the sales price of the property, and at the rate of 2½ percent on and after July 1, 1943, and to and including June 30, 1949, and at the rate of 3 percent on and after July 1, 1949, and to and including July 31, 1967, and at the rate of 4 percent thereafter."

While we recognize that not all persons pay tax on the full sales price, this enforcement problem does not work to excuse those whose sales price is known. It is intended that the full sales price be the measure for everyone.

Your reliance on the phrase “full compliance” in section 4750.5(d) of the Vehicle Code is misplaced. That subsection reads in full:

“(d) In computing any use tax or penalty thereon under the provisions of this section dollar fractions shall be disregarded in the manner specified in Section 9559 of this code. Payment of tax and penalty on this basis shall be deemed full compliance with the requirements of the Sales and Use Tax Law insofar as they are applicable to the use of vehicles to which this section relates.”

Vehicle Code section 9559 provides that in the payment of fees, amounts due may be “rounded off.” The Revenue and Taxation Code, on the other hand, does not provide for rounding off. The sole purpose of subsection (d) of section 4750.5 is to allow “rounding off” of use tax in the case of sales of vehicles by persons other than dealers. The phrase “on this basis” refers to “rounding off” and has nothing to do with the measure of tax which must be correctly determined irrespective of the question of “round off.”

Very truly yours,

Lawrence A. Augusta
Assistant Counsel