

The Commonwealth of Massachusetts

Department of Revenue

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IRA A. JACKSON
COMMISSIONER

August 8, 1983

House No. 6504 ("An Act Further Regulating the Sale and Repair of New Motor Vehicles") would require motor vehicle manufacturers to replace a new motor vehicle, or refund the contract price to the purchaser, if the vehicle does not conform to applicable warranties after reasonable attempts have been made to repair it. You inquire whether the Commissioner of Revenue is required to return the sales tax paid on a new motor vehicle sale, where the vehicle is subsequently replaced or a refund of the contract price is made.

House No. 6504 does not call for any additional payment to be made by a purchaser to a manufacturer as consideration for replacing a vehicle. Where a refund of the contract price is made under the bill, the amount of the refund would be determined by subtracting from the full contract price a reasonable allowance for use. This allowance would be calculated by multiplying the total contract price by a fraction having as its denominator 100,000 and its numerator the number of miles that the vehicle travelled prior to the manufacturer's acceptance of its return.

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House No. 6504 also provides:

"In those instances in which a vehicle is replaced by a manufacturer under the provisions of this section, said manufacturer shall reimburse the consumer for any fees for the transfer of registration or any sales tax incurred by the consumer as a result of such replacement...In those instances in which a refund is tendered under the provisions of this section, the manufacturer shall also reimburse the consumer for incidental damages including sales tax..."

The "sales price" of property on which the Massachusetts sales tax is based is defined as "the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money or otherwise" (G.L. c. 64H, § 1(14)). General Laws Chapter 64H, Section 1(14)(c)(ii) states that the sales price does not include the amount charged for property returned by purchasers to vendors upon rescission of contracts of sale, when the entire amounts charged therefor are refunded either in cash or credit, and the property is returned within 90 days from the date of sale.

Where a trade-in of a motor vehicle is received by a motor vehicle dealer who is a registered vendor, the sales tax is imposed only on the difference between the sales price of the motor vehicle purchased and the amount of the trade-in allowance (G.L. c. 64H, § 26).

Based on the foregoing,

1. Where a motor vehicle is replaced for no additional consideration, and the seller treats the replacement as a trade-in of the returned vehicle on the sale of the replacement vehicle, the purchaser is not entitled to an abatement of the tax paid on the sale of the returned vehicle, but no sales tax is due on the registration of the replacement vehicle.

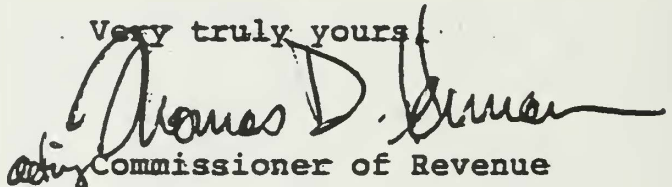
2. Where a motor vehicle is replaced for no additional consideration, and the seller treats the replacement as a rescission of the sale of the returned vehicle, the purchaser is entitled to an abatement of the tax paid on the sale of the returned vehicle only if the vehicle is

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finally returned within 90 days from the date of its sale. In this case the purchaser must pay the sales tax on registering the replacement vehicle, whether or not the first vehicle was returned within 90 days; the sales tax is imposed on the entire sales price of the replacement vehicle, with no deduction for a trade-in allowance.

3. Where a manufacturer refunds the contract price of a motor vehicle, the purchaser is entitled to an abatement of the tax paid only if the manufacturer refunds the entire amount charged (with no allowance for the purchaser's use of the vehicle) and the vehicle is finally returned within 90 days from the date of sale.

Very truly yours,


Commissioner of Revenue

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LR 83-70