



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

June 16, 1947

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas Opinion No. V-253

Re: The applicability of
the 1% sales tax to
a sale by a new car
dealer to a used car
dealer.

Dear Mr. Sheppard:

You have requested the opinion of this Department based upon the following fact situation:

"A manufacturer of motor vehicles sells a motor vehicle to an authorized new car dealer. After the sale is made the authorized new car dealer sells the car to a used car dealer, operating in some other part of the State of Texas, and the used car dealer resells this car to an individual who is required to pay a 1% sales tax."

Your first question is:

"Will it be necessary for this used car dealer to register the car and pay a 1% sales tax before offering the car for sale or does this used car dealer have the same right to sell a new unregistered car as a first sale, even though he does not hold a contract with any manufacturer to sell new cars?"

The pertinent parts of Chapter 184, Article VI, Acts of the 47th Legislature, 1941 (codified as Article 7047k, Vernon's Civil Statutes) follows:

"Sec. 1. (a) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to one (1) per cent of

the total consideration paid or to be paid to the seller by the buyer, which consideration shall include the amount paid or to be paid for said motor vehicle and all accessories attached thereto at the time of the sale, whether such consideration be in the nature of cash, credit, or exchange of other property, or a combination of these.

". . .

"Sec. 3 (a) The term 'sale or 'sales' as herein used shall include installment and credit sales, and the exchange of property, as well as the sale thereof for money, every closed transaction constituting a sale. The transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"(b) The term 'retail sale' or 'retail sales' as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use.

". . .

"Sec. 5. The taxes levied in this Article shall be collected by the Assessor and Collector of taxes of the county in which any such motor vehicle is first registered or first transferred after such a sale; the Tax Collector shall refuse to accept for registration or for transfer any motor vehicle until the tax thereon is paid.

". . ."

It will be noted that Section 5 supra, requires the 1% sales tax to be collected by the Tax Collector of the County in which the motor vehicle is first registered or first transferred after such sale. Therefore the statutes which govern the registration of the motor vehicle must be considered in pari materia with the statute imposing the sales tax.

The "Certificate of Title Act", codified as Article 1436-1, Vernon's Penal Code, (Acts 46th Legislature, 1939, p. 602) has been construed by the Supreme Court of Texas in the case of Motor Investment Co. v. Knox City, 174 S.W. (2d) 482, which involved a fact situation somewhat similar to the one above stated.

The pertinent parts of the Court's opinion are here quoted:

"Ford Motor Company manufactured an automobile and sold it in due course to Boling-Duggan, a partnership, a dealer in Dallas, and delivered the manufacturer's certificate along with the automobile. On March 7, 1940, Boling-Duggan sold the vehicle to R. M. Hedrick, taking a chattel mortgage lien for \$770 of the sale price. Boling-Duggan delivered the manufacturer's certificate to its vendee Hedrick at the time of the sale, but did not note thereon the above lien. Hedrick purchased the automobile for the purpose of converting it into a fire truck and reselling it to a consumer. After having so converted it, Hedrick, on the 30th day of April, 1940, for a valuable consideration sold and delivered the automobile to the City of Knox City. At that time said automobile had not been previously registered with nor licensed by the State Highway Department of the State of Texas. . . .

"The Certificate of Title Act, Article 1436-1, Vernon's Penal Code, was enacted by the Legislature of this State in 1939 to lessen and prevent the theft of motor vehicles, and the importation into this State of and traffic in stolen motor vehicles, and the sale of encumbered motor vehicles without disclosure of existing liens. The pertinent provisions of the Act are as follows:

"Sec. 4. The term 'Owner' includes any person, firm, association, or corporation other than manufacturer, importer, distributor, or dealer claiming title to, or having a right to operate pursuant to a lien on a motor vehicle after the first sale as herein defined, . . .

"'Sec. 7. The term 'First Sale' means the bargain, sale, transfer or delivery within this State with intent to pass an interest therein, other than a lien of a motor vehicle which has not been previously registered or licensed in this State.

"' . . .

"'Sec. 9. The term 'New Car' means a motor vehicle which has never been the subject of a first sale.

"' . . .

"'Sec. 19. The term 'Dealer' means any person purchasing motor vehicles for resale at retail to owners.

"' . . .

"'Sec. 27. Before selling or disposing of any motor vehicle required to be registered or licensed in this State on any highway or public place within this State, except with dealer's metal or cardboard license number thereto attached as now provided by law, the owner shall make application to the designated agent in the county of his domicile upon form to be prescribed by the Department for a certificate of title for such motor vehicle.

"' . . .'

"Section 27 of the Act is the section which requires the procurement of a certificate of title as a condition precedent to the right to transfer a motor vehicle. By the terms of that section such certificate of title is required for motor vehicles 'required to be registered or licensed in this State, on any highway or public place within this State'

" . . .

"Moreover, under said Section 27, it is only an 'owner' of a motor vehicle that is required to register such vehicle and secure a certificate of title therefor before selling the same. The term 'owner,' as defined in Section 4, excludes manufacturers and dealers, and includes only those claiming title 'after the first sale.' The Act divides sales of Automobiles into two classes, namely 'first sale' and 'subsequent sale.' The term 'first sale' means a transfer of a vehicle which has not previously been registered (Sec. 7), as distinguished from a 'subsequent sale,' meaning a transfer after a vehicle has been registered or should, in law, have been registered (Sec. 8). Reading the Act as a whole, we think it clear that every transfer of a motor vehicle, regardless of the number thereof, from manufacturer to dealer, dealer to dealer, and from dealer to 'owner,' as defined in the Act, constitutes a 'first sale,' and that it is not necessary that the vehicle be registered and a certificate of title thereto obtained as a condition precedent to the validity of such 'first sale.'" (Emphasis added)

". . . "

In view of the foregoing construction of the law it is not necessary for the used car dealer to register the new car and since the motor vehicle was acquired by him for the "exclusive purpose of resale", it is exempt from the motor vehicle retail sales tax under the provisions of Section 3 (b), Article 7047k, supra.

Your second question is:

"Would it make any difference if the car bought by the used car dealer from the original authorized new car dealer was a secondhand car?"

It is presumed that the secondhand motor vehicle is a "Used Car" as defined by Section 10, Article 1436-1, Vernon's Penal Code, as follows:

"The term 'Used Car' means a motor vehicle that has been the subject of a first

sale whether within this State or elsewhere."

This sale constitutes a "Subsequent Sale as defined in Section 8, Article 1436-1, Vernon's Penal Code, as follows:

"The term 'Subsequent Sale' means the bargain, sale, transfer, or delivery within this State, with intent to pass an interest therein, other than a lien of a motor vehicle which has been registered or licensed within this State or when it has not been required under law to be registered or licensed in this State."

Nevertheless, the "Used Car" being acquired by the used car dealer for the "exclusive purpose of resale", the transaction is exempt from the payment of the 1% quoted retail sales tax under the provisions of Section 3 (b) of Article 7047k, supra.

SUMMARY

A new motor vehicle acquired from the manufacturer by a car dealer, who in turn sells the vehicle to a used car dealer, need not be registered under the provisions of the "Certificate of Title Act", Article 1436-1, Vernon's Penal Code, and is not subject to the 1% motor vehicle retail sales tax, (Article 7047k, Vernon's Civil Statutes) when acquired by the used car dealer for the "exclusive purpose of resale". Motor Investment Co. v. Knox City, 141 Tex. 530, 174 S.W. (2d) 482. A "Used" car sold by a "New Car" dealer to a "Used Car" dealer who acquires it for the "exclusive purpose of resale", is exempt from the 1% retail motor vehicle retail sales tax. Article 7047k, Sec. 3 (b).

Yours very truly,

APPROVED:

Price Daniel
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CKR/lh:jrb

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