

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-98(88)S
Sales Tax
December 30, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980223B

On February 23, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Keyser Bros. Cadillac, Inc., 4130 Sheridan Drive, Williamsville, New York 14221.

The issue raised by Petitioner, Keyser Bros. Cadillac, Inc., is whether for purposes of computing the sales tax to be imposed on the purchase of an automobile, "dealer cash" paid by the automobile manufacturer and passed through to employees as a price reduction on their purchases of automobiles under the program described below is included in taxable receipts.

Petitioner submits the following facts as the basis for this Advisory Opinion.

General Motors (hereinafter "GM") currently has a "dealer cash" incentive program in effect for Petitioner and other Cadillac dealers. GM makes cash incentive payments to dealers for sales of certain car models. Under the GM Employee Option "1" Discount Program, customers who are GM employees must receive 100% of the dealer cash incentive. For example, a GM employee comes in to purchase a car with a manufacturer's suggested retail price of \$30,000. The dealer receives \$5,000 in dealer cash. The dealer sells the car to the employee for \$25,000. Under the "dealer cash" incentive program, GM does not make cash incentive payments only for sales to GM employees, but makes these payments for sales to other customers as well. However, only in the case of GM employees is the full cash incentive payment required to be passed through to the purchaser.

Applicable Law

Section 1105(a) of the Tax Law imposes a tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Opinion

In this case, Petitioner receives dealer cash which, under the GM Employee Option "1" Discount Program, must be passed through by Petitioner to GM employees purchasing vehicles as a reduction of the sales price. In Petitioner's example, a GM employee comes in to purchase a car with a manufacturer's suggested retail price of \$30,000. The dealer reduces its selling price by the amount of the dealer cash (\$5,000) and sells the car to the GM employee for \$25,000. Therefore,

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the dealer cash reduces the receipts received by Petitioner on which the sales tax must be collected. Accordingly, based on Petitioner's example, the receipts subject to the tax imposed under Section 1105(a) of the Tax Law are in the amount of \$25,000.

DATED: December 30, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.