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## PRIVATE TAXPAYER RULING LR05-005

June 29, 2005

This private taxpayer ruling is in response to your letter dated May 26, 2004, as updated on August 20, 2004, in which you requested a private taxpayer ruling on behalf of your company, . . . ("Taxpayer"). You request a ruling concerning the applicability of Arizona transaction privilege tax to replacement vehicles under Arizona's lemon law. Pursuant to Arizona Revised Statutes (A.R.S.) § 42-2101, the Arizona Department of Revenue ("Department") may issue private taxpayer rulings to taxpayers and potential taxpayers on request. Therefore, questions relating to a dealer's tax liability are not addressed in the ruling. Only questions relating to Taxpayer's liability for the tax are addressed.

### **Statement of Facts:**

Your correspondence of May 26, 2004 and August 20, 2004 provide in part the following facts relating to Taxpayer's business:

Taxpayer is a distributor of passenger motor vehicles in the United States. It sells vehicles to authorized . . . dealers who sell the vehicles to retail customers. The vehicles sold at retail are covered by a manufacturer's warranty for specific time periods or mileage, whichever comes first. The vehicles are also subject to certain state and federal requirements regarding implied warranties. Arizona's lemon law provides for certain remedies if the manufacturer, its agents or authorized dealers do not conform the vehicle to an express warranty by repairing or correcting any defect or condition that substantially impairs the use and value of the motor vehicle to the consumer. Those remedies include replacement of the vehicle with a new vehicle, or accept the return of the vehicle from the consumer and refund the full purchase price.

Your correspondence describes the typical process regarding a non-conforming motor vehicle:

1. The retail customer makes a claim pursuant to the Arizona lemon law with Taxpayer.
2. If Taxpayer and the customer cannot reach an agreement, the case is taken to arbitration.
3. If the customer agrees to accept a replacement vehicle, Taxpayer locates a similar vehicle and arranges with an authorized dealer to

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- process the transaction. The replacement vehicle can be from either the dealer's inventory or shipped to the dealer from Taxpayer's inventory.
- a. If the vehicle is from the dealer's inventory, Taxpayer pays the dealer the invoice price amount originally paid to Taxpayer for the vehicle.
  - b. If the vehicle is from Taxpayer's inventory, the dealer is invoiced for the vehicle and then Taxpayer pays the dealer the invoice price.
4. In most situations, the customer is not required to pay any additional amount for the vehicle. However, if the customer chooses to upgrade the vehicle (i.e., additional accessories or options), the customer pays the upgrade cost on the new vehicle.
  5. Taxpayer reimburses the dealer for any registration and fees payable to transfer the replacement vehicle to the customer.

### **Issue:**

The issue, as stated by Taxpayer, is:

If the vehicle is delivered through a dealership directly from Taxpayer's inventory (the dealer is not paid for the vehicle), would the transaction between the customer and Taxpayer be subject to transaction privilege tax? The customer would not pay Taxpayer for the replacement.

### **Your Position:**

Taxpayer's position as stated in your letters of May 26, 2004 and August 20, 2004:

[S]ubsequent use of tangible personal property (in this case a replacement [identical or equal] vehicle) in satisfaction of an implied warranty would not be subject to tax under either the retail classification or under the use tax since it is covered under the contractual terms of the original contract.

### **Conclusion and Ruling:**

Based on the information provided, if Taxpayer replaces a motor vehicle with a new motor vehicle from Taxpayer's inventory pursuant to A.R.S. § 44-1263(A) under the terms of the warranty or service provision as defined in Arizona Transaction Privilege Tax Ruling TPR 92-5, there would be no increase of transaction privilege tax unless the replacement vehicle is of greater value pursuant to A.R.S. § 44-1263(C)(3).

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If the value of the new replacement vehicle is equal to the original value of the non-conforming vehicle, Taxpayer will not incur a transaction privilege tax liability. If the replacement vehicle is an upgrade from the originally purchased vehicle, Taxpayer is subject to transaction privilege tax on the increase in value.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated May 26, 2004 and August 20, 2004 respectively.

**This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. The determinations are subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the Department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different Department position.**

**The determinations in this private taxpayer ruling are applicable only to the taxpayer requesting the ruling and may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.**