



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 20, 1957

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-52

Re: Whether or not a sales tax should be paid on the transfer of the motor vehicles from the Dresser Industries, Inc., to the Lease Plan, Inc., and a use tax on the transfer of the motor vehicles from the Lease Plan, Inc., to the Dresser Industries, Inc.

Dear Mr. Calvert:

You request the opinion of this office upon the questions contained in your letter of February 27, 1957, as follows:

"We are enclosing a letter we received from Mr. R. J. Banks, attorney for Dresser Industries, Incorporated, Dallas, Texas; also copies of two agreements, one covering the transfer of motor vehicles sold by Dresser Industries, Inc., a Delaware corporation, to Lease Plan, Incorporated. The other agreement refers to the lease of the motor vehicles by the Lease Plan, Inc., to Dresser Industries, Inc.

"The agreements refer to a financing arrangement between the two corporations, and Mr. Banks stated in his letter that he was of the opinion that the sale and use tax levied in Article 7047K, Section 2-a should not be paid on the transfers.

"You will please advise us whether or not in your opinion a sales tax should be paid on the transfer of the motor vehicles from the Dresser Industries, Inc., to the Lease Plan, Inc., and a use tax on the transfer of the motor vehicles from the Lease Plan, Inc., to the Dresser Industries, Inc."

Your questions reframed are:

1. Is the Sales Tax imposed by Section 1 of Article 7047k, Vernon's Civil Statutes, upon retail sales of motor vehicles sold in this State due by virtue of the contract of sale and purchase made between Dresser Industries, Inc., as the Seller and Lease Plan, Inc., as the Purchaser, said contract of sale and purchase being dated February 15, 1957, a copy of which is submitted with your request.

2, is the Use Tax imposed by Section 2 of Article 7047k, V.C.S., on vehicles purchased at retail sale outside this State and brought into this State for use upon the public highways thereof by a firm or corporation domiciled or doing business in this State, by virtue of the contract of sale and purchase between Lease Plan, Inc., and Dresser Industries, Inc., and the lease agreement between Lease Plan, Inc., as Lessor and Dresser Industries, Inc., as Lessee, said lease, being dated February 18, 1957, a copy of which is submitted with your request.

We answer your questions in the foregoing order. Section 1(a) of Article 7047k, V.C.S., levies a tax of 1.1% of the total consideration paid to the Seller by the Buyer of motor vehicles sold in this State, with some conditions not material here.

We must determine if the contract of sale and purchase of February 15, 1957, between Dresser Industries, Inc., designated in the contract as the Seller, and Lease Plan, Inc., designated in the contract as the Purchaser, constitutes a sale of motor vehicles within the purview of the statute, and therefore taxable. An examination of the entire contract is therefore necessary. It is as follows:

"This agreement entered into this 15th day of February, 1957, by and between DRESSER INDUSTRIES, INC., a Delaware corporation, which, with its successors and assigns, is hereinafter termed the "SELLER", and LEASE PLAN, INC., a New York Corporation, which, with its successors and assigns, is hereinafter termed "PURCHASER".

"WITNESSETH:

"1. In consideration of the sum of \$4,522,699.99 and the covenants and premises herein recited, the SELLER and its undersigned subsidiary companies herewith agree to sell, and the PURCHASER herewith agrees to purchase, all of the equipment described in that certain proposed Equipment Lease Agreement, a copy of which is attached hereto and marked Exhibit "A", which exhibit is made a part hereof for all purposes.

"2. The SELLER hereby represents and warrants that all of said equipment is, and at the time of the transfer of title will be, in good state of repair and operating condition; that SELLER and its subsidiary companies have clear title thereto, and that all of such equipment is free and clear of all liens and encumbrances whatsoever.

"The SELLER and its subsidiary companies do hereby sell, assign and transfer to the PURCHASER all of their

right, title and interest in and to said equipment and warrant that the same is free and clear of all liens and encumbrances whatsoever and agree to warrant and defend the same against all and every person or persons whomsoever.

"The SELLER and its subsidiary companies will execute such bills of sale, certificates of title or other instruments of conveyance which may be legally necessary to confirm the foregoing sales and transfers of unencumbered title to the PURCHASER.

"3. It is understood and agreed by and between the parties hereto that, in addition to the purchase price hereinafter referred to, one of the considerations for SELLER entering into this agreement to sell the equipment, hereinabove referred to, to PURCHASER is the agreement of PURCHASER, as evidenced by said Exhibit "A", to lease said equipment to SELLER in accordance with the terms and conditions of said Exhibit "A".

"4. The purchase price of \$4,522,699.99 for the equipment now described in Exhibit "A" shall be payable in cash by the PURCHASER to the SELLER upon the execution of the Equipment Lease Agreement as set forth in Exhibit "A".

"Each of the undersigned companies, except SELLER and PURCHASER, do hereby authorize PURCHASER and MANUFACTURERS TRUST COMPANY, 55 Broad Street, New York City, New York, to pay the purchase price for such equipment to DRESSER INDUSTRIES, INC., and do further authorize DRESSER INDUSTRIES, INC., to receive and receipt for all moneys received in connection with the sale of such equipment, and such companies do further agree to hold PURCHASER and MANUFACTURERS TRUST COMPANY harmless from any and all claims, demands, or right to receive payment for the sale of any such equipment.

"IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the day, month and year hereinabove set forth at Dallas, Texas.

We do not know if all or only a part of the equipment covered by the aforesaid contract consists of motor vehicles. We assume that a substantive portion of it does. This opinion is confined, in answering your first question, only to motor vehicles covered by the contract, located within this State as of the date of the contract

and which have not been taken out of the State and resold prior to the date of the contract. The statute defines "sale" or "sales" and "retail sale" or "retail sales" as follows:

"The term 'sale' or 'sales' as herein used shall include instalment and credit sales, and the exchange of property, as well as the sale thereof for money, every closed transaction constituting a sale. . .

"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."

We think the contract construed in its entirety imports a "sale. . . for money" and is a "closed transaction" and is a sale for use and not for resale, all features of a taxable sale under the statute.

You are therefore respectfully advised that as to all motor vehicles located in Texas, where they have remained without a resale outside the State, that are covered by the contract, the tax imposed by Section 1(a) of Article 7047k, V.C.S., is due.

In answer to the second part of your question, you are advised that the use tax imposed by Section 2 of Article 7047k, on purchases of motor vehicles made outside the State and brought into this State for use upon the public highways by a resident of this State or by firms or corporations domiciled or doing business in this State would apply to any of the motor vehicles covered by the contract or lease agreement purchased outside the State, but brought into the State for use upon the highways of this State. The use tax may accrue under circumstances such as covered by our Opinion No. V-1044, a copy of which you have. Therefore, if Dresser Industries, Inc., should bring into the State motor vehicles, covered by the contract, that were purchased outside the State but brought into the State for use upon the highways of the State, the use tax would be due by the one who operates said motor vehicles upon the public highways of this State. This is provided for by the statute in this language:

". . . The tax shall be the obligation of and be paid by the person, firm, or corporation operating said motor vehicle upon the public highways of this State."

The statute contains the only exemption from the tax which we are privileged to recognize; that is where the purchase is made for resale and not for use. It is quite clear that the motor vehicles involved here are for use and not for resale. We do not regard the lease agreement as modifying or changing the otherwise plain and unambiguous language of the contract of sale and purchase. No tax is

imposed under the statute upon the leasing of motor vehicles, but only upon sales.

You are therefore advised in answer to the second part of your question that the use tax imposed by Section 2 of Article 7047k, depends upon whether there is involved motor vehicles purchased outside the State but brought into the State for use upon the public highways. This, of course, is a question of fact which we are not authorized to pass upon.

This taxing statute (Article 7047k, Vernon's Civil Statutes) must of a necessity be construed in connection with Article 1436-1, Vernon's Annotated Penal Code commonly referred to as the Certificate of Title Act. This Article of the Penal Code is divided into many sections and subsections and a detailed analysis is not required for the purpose of this Opinion. Suffice it to say that it covers every step of the way referable to the sale, mortgage, etc., of motor vehicles. The Court of Civil Appeals in the case of Commercial Credit Corporation, v. Harris, 227 S.W.2d 886 (no writ history) expressed it as follows:

"Since 1939, Article 1436-1, Vernon's Penal Code, which article is divided into more than sixty-four sections and subsections, has been in effect in this State. The act is very complete in its detail and covers every step of the way referable to acquiring, owning, operating, buying, selling, mortgaging and otherwise creating liens on motor vehicles. All persons in this State are chargeable with notice of its provisions and must in their dealings be governed thereby. ..."

The case of Griffin v. Moon, 288 S.W.2d 543 (no writ history) holds that the provisions of Article 1436-1, Vernon's Annotated Penal Code, if not strictly observed, neither a sale nor a mortgage is accomplished and the parties will be left as the Court finds them.

The Supreme Court in the case of Motor Investment Co. v. City of Hamlin, 142 Tex. 486, 179 S.W.2d 278, said the following:

". . . The obvious purpose of the act is to cover the whole field of sales and liens upon such motor vehicles. It carries the usual provision that 'All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.'"

SUMMARY

The sales tax imposed by Section 1 of Article 7047k, V.C.S., accrues upon all retail sales of motor vehicles sold in this State and the use tax imposed by Section 2 of Article 7047k, V.C.S.,

Hon. Robert S. Calvert, page 6 (WW-52)

accrues on all purchases of motor vehicles made outside this State, but brought into this State for use upon the public highways by a resident of this State or a firm or corporation domiciled or doing business in this State and the tax is imposed upon the user of the vehicle upon the highways of this State. This taxing statute should be construed in connection with Article 1436-1, Vernon's Annotated Penal Code.

Yours very truly,

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By



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Assistant

LPL:cs

APPROVED:

OPINION COMMITTEE
H. Grady Chandler, Chairman