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March 26, 1993

X-----

Re: X-----

Dear X-----:

This is in response to your letter dated February 8, 1993 in which you state:

“Mr. X----- recently won a contest from Coca Cola and Pontiac Motor Division of General Motors. The award is a new 1993 Pontiac Grand Am. As we are the nearest Pontiac Dealer to Mr. X-----, we were asked to deliver the vehicle to him.

“The above vehicle is in our inventory and it was purchased from Pontiac Motor Division by Pontiac. We floor all our vehicles with GMAC, therefore Pontiac Motor Division was paid for this vehicle and X----- Pontiac owns this vehicle through GMAC with flooring (interest) paid monthly.

“Mr. X----- has no need for this car and would like Pontiac to repurchase this vehicle and issue cash to Mr. X----- in lieu of the vehicle.

“This is acceptable to X----- Pontiac. Our only concern is who (if anybody) is responsible for the sales tax.

“Per our phone conversation, it appears the sales tax would not have to be collected as the prize winner is never actually taking possession of the winning vehicle.

“X----- Pontiac is keeping and retailing this vehicle to another customer who will actually pay the sales tax. If this is true and accurate, please respond to me so we can be in agreement.”

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. A sale includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. Rev. & Tax. Code § 6006(a).

As we understand the facts, Mr. X----- will not receive possession of the Grand Am. We assume also that your dealership will not pass title to him. In other words, he will never

own or possess the Grand Am and thus cannot pass title or possession to the vehicle back to your dealership. Therefore, there has been no gift from your dealership to Mr. X----- and no sale from Mr. X----- to your dealership. The cash he receives is in lieu of the vehicle which he never owned or possessed.¹

Since there is no sale from your dealership to Mr. X----- or from Mr. X----- --- to your dealership, this transaction has no sales tax consequences. Your sale of the vehicle to another customer is subject to sales tax which is imposed upon your dealership. Your dealership may, however, collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. Rev. & Tax. Code § 1656.1.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cl

¹ If title does pass to Mr. X-----, at any time, the tax consequences will not be as stated above.