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Op. 56-6

January 13, 1956

Honorable Earl W. Fase  
Tax Commissioner  
Territory of Hawaii  
Honolulu, Hawaii

Dear Sir:

This concerns the proposed assessment against Finance Factors, Ltd. upon the sale of new automobiles repossessed from a dealer under the terms of trust certificates held by the finance company. There were thirty-four of these cars. Nine were sold to a dealer and four to a government agency. In order to dispose of the remaining twenty-one the finance company took out a dealer's license under Act 90 (series C-177) L. 1951, rented a location which it used for about four weeks, employed experienced auto salesmen, and advertised in the newspapers.

It is stated by the finance company that the dealer's license was taken out because the Motor Vehicle Dealers' Licensing Board insisted upon it and stated that it would obtain an injunction if the license was not taken out. Under the terms of the licensing act the company was not required to take out a license unless its acts as to these cars constituted "engaging in business." Thus the company decided to concede this rather than to litigate the point, but now having obtained the benefits of the license is taking a contrary view.

As to the renting of the location the company contends that it did this because it could not use the warehouse where the cars were stored for display purposes.

It is not explained why the company hired experienced salesmen rather than using its own personnel, except the general statement that the automobile market was depressed and there was not a good demand for this make of car.

The twenty-one cars were sold in the above manner to individual owners for a total of \$33,656.40. I am of the view

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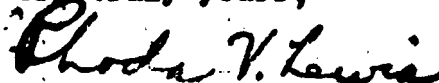
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that the company did engage in business as to these twenty-one cars. They took out a dealer's license, rented a location, hired salesmen and advertised the cars because no other means could be found for realizing as much. The fact that the reason for going into business is that it is the best means of liquidating a holding does not avoid the conclusion that business was engaged in. See Ehrman v. Commissioner, 120 F.2d 607.

As to the nine cars sold to dealers and the four sold to a government agency, these apparently were sold before the decision was made to go into business and were not sold off the lot. These sales should be considered incidental to the finance business and should not be taxed.

Very truly yours,



RHODA V. LEWIS  
Deputy Attorney General

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