



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

AL ENDSLEY, Commissioner

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January 14, 1994

Mr. Sam Kelley
Attorney at Law
815 Brazos, Suite 702
Austin, Texas 78701

Dear Mr. Kelley:

You have requested an interpretation approved by the Finance Commission of Texas as provided in Tex. Rev. Civ. Stat. Ann. arts. 5069-2.02A (10). Your request is that I define the proper disclosure of a "unit property tax value" dollar amount in retail installment contracts made pursuant to Tex. Rev. Civ. Stat. Ann. art. 5069, Chapter 6 or 7. More specifically you have asked if the "unit property tax value" created by Senate Bill 878, 73rd Legislature is included in the term "any taxes" as used in Tex. Rev. Civ. Stat. Ann. arts. 5069-6.01(j) (iii) and 7.01(g) (ii) and therefore includable in such contracts as an "itemized charge."

Senate Bill 878 established the term "unit property tax value" which is not within the statutory text defined as or referred to as a tax but represents a prepayment of an amount to escrow to be credited to a tax bill determined at a later date. Due to the lack of clarity as to the nature of the "unit property tax value" I have sought guidance from Comptroller John Sharp and Senator John Montford, the sponsor of the legislation. Senator Montford has responded to my inquiry advising that "The Legislature intended that the unit property tax value be deemed a tax for all purposes, including as used in the consumer credit statutes." In general, Senator Montford stated that the reasons in support of that position are that the unit property tax value determined on each vehicle sale is remitted to the tax assessor-collector monthly and that the vehicle seller can never recover the amounts remitted to the tax assessor-collector even if the remittances exceed the seller's tax bill. Comptroller Sharp has advised that he has no basis on which to differ with Senator Montford. Senator Montford also stated that "It was the intent of the Legislature that the unit property tax value be itemized and disclosed to the purchaser of a vehicle. Indeed, that was one of the more notable aspects of the bill because it provides an accurate statutory method for determining the seller's property taxes on a 'per unit' basis."

Based on Comptroller Sharp's and Senator Montford's views as to the nature of the "unit property tax value" I find that it is a tax within the scope of Tex. Rev. Civ. Stat. Ann. arts. 5069-6.01 et seq. and 7.01 et seq. Tex. Rev. Civ. Stat. arts. 5069-6.01(i) and (j) permit the inclusion of "any taxes" in a retail installment transaction for consumer goods and services either in the "cash price" or as an

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"itemized charge." Articles 7.01(f) and (g) are essentially identical as to motor vehicle transactions. Due to the unique character of "unit property tax value" Senator Montford has stated that the Legislature intended that the "unit property tax value" not be included as part of the sales price of a vehicle on which sales tax is to be computed. Comptroller Sharp has concurred with that view. In light of that separation and distinction, I believe that disclosing the itemized amount of the unit property tax value in a retail installment contract as an itemized charge would best serve the public interest. Such charge should bear a clear and meaningful caption such as "Dealer's Inventory Tax." The statute, however, permits its inclusion in the cash price. Inclusion in the cash price does not preclude full disclosure to the buyer in keeping with Senator Montford's statement of legislative intent quoted above.

The rationale used in reaching this conclusion does not affect the handling of sales taxes but will not, under current law, permit the pass through of any other seller's taxes as an itemized charge.

Between the receipt of your request and the writing of this response we have received one or more oral inquiries from motor vehicle dealers asking if they can in their advertising offer to pay the tax (unit property tax value) for the vehicle buyer. To permit such runs contrary to the spirit of full disclosure to the buyer and the prohibition in Chapter 7 against cash payments. We do not condone such handling of this tax.

Sincerely,



Al Endsley

Interpretation 94-1.

Approved by the Finance Commission January 14, 1994.