STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PHILANZ OLDSMOBILE, INC.	:	DETERMINATION
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period June 1, 1982 through May 31, 1985.	:	

Petitioner, Philanz Oldsmobile, Inc., 960 East Ridge Road, Rochester, New York 14621, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1982 through May 31, 1985 (File No. 802761).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 259 Monroe Avenue, Rochester, New York, on June 2, 1987 at 9:15 A.M. Petitioner appeared by Philip J. Lanzatella, President. The Audit Division appeared by John P. Dugan, Esq., (James Della Porta, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined that vehicles placed in petitioner's company car account were subject to compensating use tax based on their full book value at the time the vehicles were placed in such account.

II. Whether the Audit Division properly determined that compensating use tax was due on certain of petitioner's demonstrator vehicles.

FINDINGS OF FACT

1. On November 20, 1985, following a detailed audit of petitioner's books and records, the Audit Division issued to petitioner, Philanz Oldsmobile, Inc., two notices of determination and demands for payment of sales and use taxes duewhich, in the aggregate, asserted $14,757.10 in additional tax due for the period June 1, 1982 through May 31, 1985, plus penalty and interest.

2. Following the issuance of the notices herein, the Audit Division withdrew its assertion

of penalty against petitioner.

3. During the period at issue, petitioner, which operated an automobile dealership, placed certain of its vehicles in a company car account. While they remained in this account, these vehicles were used by petitioner's employees to transport petitioner's customers to work while the customers' own cars remained at petitioner's premises for maintenance or repair services. Petitioner also kept vehicles in the company car account for use by its parts department.

4. Petitioner frequently replaced the vehicles in the company car account. Upon doing so, the vehicles which were removed from the account were placed back in inventory for resale.

5. Petitioner did not dispute that the vehicles placed in the company car account were subject to use tax; rather, its method of computing the amount of tax due on its company car account vehicles is at issue herein.

6. When petitioner replaced vehicles in the company car account, it determined use tax due on the new vehicle placed in the account by deducting from the book value of that vehicle the book value of the vehicle being removed from the account and calculating tax due based upon the difference.

7. On audit, the Audit Division determined that, with respect to the company car account, use tax was properly calculated based upon the full book value of the vehicle placed into the account, with no allowance made for the value of the vehicle removed from the account. Of the total tax at issue herein, $5,402.36 results from this Audit Division determination with respect to vehicles placed in the company car account.

8. The remaining $9,354.74 of the deficiency herein was premised upon an Audit Division determination that certain of petitioner's demonstrator vehicles were occasionally put to personal use by petitioner's employees and therefore subject to use tax. The Audit Division computed the tax liability with respect to the demonstrator cars by applying the prevailing tax rate to a monthly depreciation rate of two percent of the vehicle's cost to petitioner. This method of computing use tax liability with respect to demonstrator cars was premised on Audit Division policy as reflected in Technical Services Bureau Memorandum 83(13)S.

9. Petitioner's employees were allowed to drive the demonstrator cars to and from home each workday. They were not permitted to make any other personal use of the vehicle, nor were any employee family members permitted to drive the vehicles. At all times a sticker setting forth information regarding the vehicle and also indicating the manufacturer's suggested retail price of the vehicle was affixed to a rear window of each of the cars. Petitioner's employees were encouraged to sell their cars and to take prospective customers for rides in the vehicles at all times, including those times when they were not working at the showroom.

SUMMARY OF PETITIONER'S POSITION

10. With respect to its company car account vehicles, petitioner contended that it should be allowed, what was, in effect, a trade-in allowance when replacing vehicles in that account. Petitioner argued that its replacing of vehicles in that account was analogous to any other business which traded in a used vehicle and purchased a new vehicle and received credit on its purchase price for the value of the trade-ins.

11. With respect to the demonstrators, petitioner contended that inasmuch as its sales people were encouraged to sell cars 24 hours a day, no personal use of the demonstrators could or did occur.

CONCLUSIONS OF LAW

A. The use of the vehicles placed in petitioner's company car account was a taxable use subject to tax pursuant to section 1110 of the Tax Law, and petitioner was not entitled to a trade-in allowance or credit on the value of the vehicles placed in this account. Tax Law § 1110 does allow for credit for the value of trade-ins taken as partial compensation during a sale. Here, however, only one entity was involved and no sale took place. Petitioner simply transferred vehicles from its own inventory into the company car account. The Audit Division therefore properly determined additional tax due herein in respect of the vehicles placed in petitioner's

company car account. (See Greco Brothers Amusement Co., Inc. v. Chu, 113 AD2d 622.)

B. The use of the demonstrator vehicles by petitioner's employees to travel to and from work was a personal use of the vehicles by the employees thereby rendering such vehicles subject to compensating use tax (see 20 NYCRR 531.3[a][2]). The Audit Division therefore properly determined that the demonstrator vehicles at issue were subject to compensating use tax and properly calculated the additional tax due herein with respect to such vehicles.

C. The petition of Philanz Oldsmobile, Inc. is in all respects denied and the notices of determination, dated November 20, 1985, as adjusted (Finding of Fact "2"), are sustained.

DATED: Albany, New York
December 23, 1987

ADMINISTRATIVE LAW JUDGE