



May 26, 2011

Mr. Dave Zellers
Vice President, Customer Retention
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Avenue
Torrance, CA 90501

Dear Mr. Zellers:

We have your letter of May 2, 2011. We understand Toyota's desire to control decisions concerning the programs you offer to dealers. However, you seem to disregard two critical points.

1. Any program you offer should be offered in accordance with all applicable laws; and
2. Any program you offer should be done in a way that is not deceptive to dealers and does not place them in legal jeopardy.

If you are going to advise your dealers that the transactions in which they are engaging are not taxable, you should at least provide the basis on which you make that statement. You claim to have research that supports your position; you just don't want to share it. We have done the research. It does not support your position. Allow us to share it.

The Virginia Administrative Code clearly makes sale of non-labor items in service work taxable; and if the charges are not itemized it makes the entire sale, labor and parts, taxable.

23VAC10-210-3050. Repair businesses.

A. Sales. Any person engaged in the business of repairing tangible personal property is required to register and to collect and pay the tax. If the dealer performing the repair work does not separately state, itemize or segregate at a fixed or retail price, the parts, materials and supplies sold, the tax will apply to the total charge including repair labor.

The fact that the sale is paid for by you is irrelevant to the issue of taxability. It might be different if the sale was pursuant to a maintenance plan paid for by the customer (and taxed appropriately). It is not. This plan under which these services are provided is not a maintenance contract since it was not issued to the customer "for a fee" as required by 23 VAC 10-210-910.

In these days of scarce resources, there is a very strong possibility that the Virginia Department of Taxation will see it this way. Under the applicable regulatory scheme, one either pays taxes on the non-labor items used in repairs either when the maintenance plan is sold (which is not applicable here) and taxed or when the repairs take place and the parts are taxed. Either way, the state will claim its share. In Virginia, these will not be non-taxable because Toyota declares it so.

If you have a basis for your simple declaration that the repairs are fully non-taxable based on your secret research, then arm the dealers with that information. If you are not prepared to do

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that, stop misleading your dealers. And then reimburse the dealers for taxes apparently owed to the state as the law requires.

We understand your point that this is a "voluntary" program for dealers. We also note that the requirements on franchisor compensation of dealers under the applicable Virginia Code section is not limited to warranties.

§ 46.2-1571. Warranty and sales incentive obligations.

A. Each motor vehicle manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its motor vehicle dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, and warranty service on its products and (ii) compensate the dealer for warranty parts, service and diagnostic work required of the dealer by the manufacturer or distributor as follows:

* * *

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § [59.1-207.34](#) or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for warranty service or parts.

Under the Virginia Code, where work is done at the request of the manufacturer, the dealer must be compensated in the same way as warranty work. Just as you need to fully compensate dealers for work done under warranties, you must fully compensate dealers for work requested by the manufacturer, including taxes for which the dealer is responsible.

Your position that the decision to engage in your program is a voluntary one does not impact this. The use of the word "requested" makes clear the intent of the Virginia General Assembly to extend the warranty reimbursement statute to repairs that are not mandatory on a dealer.

The program that dealers are honoring is one put in place by Toyota because of the unfortunate series of events surrounding recalls and other product issues of your company. As such, it was put in place and dealers were notified of these programs and were requested to participate in them to help protect the strength of the Toyota product name. We do not disagree that this was beneficial for both Toyota and dealers. However, protection of the reputation of product by making sure that warranty work is completed is also beneficial for both Toyota and dealers, and the Virginia Code makes it very clear that a dealer must be fully compensated for warranty work.

We request that you reconsider your position. Either reveal to your dealers the basis for your position that the work under this program is fully non-taxable or advise dealers that you have no basis and recognize your obligation under Virginia law to compensate dealers for the tax on fluids and parts that appear to be due to the Commonwealth of Virginia.

Sincerely,



Donald L. Hall
President