



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SUPERIOR MOTOR SALES, INC.)

OPINION ON DENIAL OF REHEARING

Appellant has filed a petition for rehearing in this matter, citing in its petition the case of Johnson v. Commissioner, 233 Fed. 2d 952, which was decided shortly after our original opinion was issued. This case is cited in support of Appellant's position that amounts credited to a "dealer's reserve" by a finance company at the time of purchasing an automobile dealer's notes and contracts do not accrue as income to the dealer at the time the amounts are so credited,

Our original opinion was based upon a line of tax court decisions headed by Shoemaker-Nash, Inc., 41 B.T.A. 417. We had previously adopted a similar view in Appeal of Harrison Pontiac Company, decided May 29, 1952. The effect of the Johnson decision has recently been considered by the Tax Court in Albert M. Brodsky, 27 T.C. No. 23. On facts materially the same as those in the instant case the Tax Court stated:

"The Shoemaker-Nash case, supra, since 1940 has been repeatedly followed by this Court in a number of memorandum decisions and, in our opinion, correctly states the law applicable to the facts here presented. With due deference to the contrary conclusion reached by the Court of Appeals in the Johnson case, supra, we prefer to adhere to our decisions."

We, likewise, believe that our original opinion correctly states the law and conclude that a rehearing should not be granted,

On the other issue involved in this matter, the question of whether amounts credited to the dealer's reserve can be deducted as additions to a bad debt reserve, we also find that the Appellant has presented no grounds for rehearing,

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition for rehearing under Section 25667 of the Revenue and Taxation Code of the Appeal of Superior Motor Sales, Inc., from the action of the Franchise Tax

Appeal of Superior Motor Sales, Inc.

Board in denying Appellants protests to proposed assessments of additional franchise tax in the amounts of \$347.12, \$347.12 and \$161.94 for the taxable years ended June 30, 1948, 1949 and 1950, respectively, the Board is of the opinion that none of the grounds for rehearing set forth in said petition constitutes cause for the granting thereof and, accordingly it is ordered that said petition be and the same is hereby denied, and that the order of the Board of February 1, 1956, be and the same is hereby affirmed,

Done at Sacramento, California, this 5th day of February, 1957, by the State Board of Equalization,

Robert E. McDavid, Chairman

George R. Reilly, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary