IT 2648 - Income tax: motor vehicle manufacturers, distributors and dealers: demonstration stock valuation; holdback amounts and warranty obligations

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This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING IT 2648

This Ruling inorporates the Erratum dated 12 September 1991

NO Ref.: 91/4174-0

Date of effect: See paragraphs 11-12,26-27,41-43

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FOI INDEX DETAIL

Reference no.:	Subject refs:	Legislative refs:
I 1012798	**DEMONSTRATION STOCK**	**25(1)**
	HOLDBACK AMOUNTS	**31(1)**
	REPLACEMENT PRICE	**51(1)**
	WARRANTY OBLIGATIONS	**54**

OTHER RULINGS ON THIS TOPIC: IT 2132; ST 2108; CITCM 497

INCOME TAX: MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS: DEMONSTRATION STOCK VALUATION; HOLDBACK AMOUNTS AND WARRANTY OBLIGATIONS

TE: . Income Tax Rulings do not have the force of law.

. Each decision made by the Australian Taxation Office is made on the merits of each individual case having regard to any relevant Ruling.

PREAMBLE

The purpose of this Ruling is to set out the approach of this Office to several issues peculiarly related to motor vehicle dealers, manufacturers and distributors. The issues are:

A. What constitutes the replacement price of demonstration stock for the purpose of subsection 31(1) of the Income Tax Assessment Act 1936 ("the Act").

B. The time at which a "holdback" receipt is derived by a motor vehicle dealer and the time at which a "holdback" payment is incurred by a manufacturer or distributor.

C. The taxation treatment of warranty arrangements.

BACKGROUND

2. The general practice in the Australian motor vehicle industry is for dealers to acquire new vehicles from manufacturers and distributors under "floor plan arrangements" (e.g. see F.C. of T. v. Suttons Motors (Chullora) Wholesale Pty Ltd 85 ATC 4398; (1985) 16 ATR 567). Under a floor plan arrangement, a group of companies consisting of at least a wholesale and a retail company carry on a dealership. The wholesaler normally obtains delivery of, and

subsequently purchases, new vehicles from a finance company, commonly associated with the manufacturer. The finance company purchases the vehicles from the manufacturer. It is not until a retail customer purchases a vehicle that the wholesaler has to pay for the vehicle. Until payment, the vehicles remain the property of the finance company. In the Suttons Motors Case the High Court of Australia held that vehicles held by the wholesale company under the floor plan arrangement were trading stock on hand.

A. DEMONSTRATION STOCK

FACTS

3. A demonstration model (also known in the industry as a "demonstrator") is a vehicle purchased for the purpose of sale but set aside for the purpose of providing prospective customers an opportunity to test drive a particular model of the vehicle. Vehicles used as demonstrators are mostly new vehicles designated from the stock acquired by the dealer under a floor plan arrangement. However, it is now common for new car dealers to use used cars as demonstration vehicles. There may be extraordinary cases where a vehicle is acquired to be used as a demonstrator but the sale of the vehicle is not one of the purposes of the dealer e.g. if it is intended that the vehicle be used as a courtesy car after being used as a demonstrator.

4. The term "demonstrator" as used in the industry includes what are otherwise known as "drive cars". A drive car is a new car used by company staff, particularly salespersons. They are used not only for demonstrations but also for ordinary business purposes, e.g., collections and deliveries, and for the personal use of the staff member to whom the drive car has been assigned. Drive cars, like other demonstrators, are purchased for the purpose of sale. The term "demonstration model" or "demonstrator" as used in this Ruling therefore includes drive cars.

RULING

The Replacement Price of Demonstration Stock

5. Demonstrators are part of the trading stock of a dealer because they are "acquired or purchased for purposes of... sale or exchange" (see definition of "trading stock" in subsection 6(1)). A vehicle does not ordinarily cease to be trading stock when it is set aside for use as a demonstrator because it is intended that it will be resold and that resale will occur in the not distant future (Investment and Merchant Finance Corporation Ltd v. F.C. of T. (1971) 125 CLR 249 at pp.270-271; 71 ATC 4140 at p.4150 ; 2 ATR 361 at p.373). In the unusual case in which a demonstrator is not purchased for the purpose of sale (see last sentence of paragraph 3 above), the vehicle should not be treated as trading stock - it will, however, be depreciated (see paragraph 10 for details).

6. Subsection 31(1) permits a taxpayer in valuing each article of trading stock on hand at the end of a year of income to adopt either cost price, market value or the price at which it can be replaced. Many dealers adopt the replacement price option to value demonstration vehicles on hand. The replacement price adopted is the market value of the demonstration model as a used vehicle on the last day of the income year, being a price invariably lower than the cost price of the demonstration vehicle.

7. Canberra Income Tax Circular Memorandum No.497 discusses the meaning of the words "the price at which it can be replaced" in subsection 31(1). It states:

> "11. 'The price at which it can be replaced' is construed as meaning the amount which the taxpayer would have to pay in his buying market in order to replace a substantially identical article in his stock on the last day of the accounting period.
>
> 12. ...It is thought that, generally speaking, the occasions when replacement price calculated on any reasonable basis would be less than cost price will be relatively few. Where such occasions arise, it is probable that little difficulty will be experienced in coming to an agreement with the trader as to what factors should be taken into account in determining replacement price, having regard to his usual buying practices."

8. This Office accepts that demonstration vehicles are one example of trading stock for which replacement price may be less than cost price. In the case of a demonstration model on hand with a dealer at the end of a year of income, "the price at which it can be replaced" in terms of subsection 31(1) is the price at which the dealer can buy a vehicle in a substantially identical condition (e.g. distance travelled, wear and tear, etc.) to the particular demonstration model.

9. In determining the price at which the dealer can buy a vehicle in a substantially identical condition in his or her market, it is acceptable for a dealer to proceed on the basis of the price at which such a vehicle could be purchased, for example, at a car auction (especially a factory auction) or by wholesale from another arm's length dealer. The various used car price guides used in the industry will generally be of little assistance in determining the replacement price of a demonstration vehicle because they do not contain reliable figures on vehicles of a very young age. Because the trade-in price at which vehicles are acquired is often inflated, trade-in prices would not provide a reasonable basis for determining replacement price. A valuation by a truly independent valuer (not being an associate of the dealer or a person with whom the dealer deals in the course of its business) may assist a dealer in determining the replacement price.

10. Depreciation is not allowable for income tax purposes on articles of trading stock. This is because stock in trade is not "plant or articles" for the purposes of the depreciation provisions (especially section 54) of the income tax law (Yarmouth v. France (1887) 19 QBD 647 at p.658; (1956) 7 TBRD Case G39). Accordingly:

. In the ordinary situation in which demonstrators are trading stock - no deduction is allowable for depreciation.

. In an unusual case in which a demonstrator is not trading stock (see paragraph 3 above) - depreciation would be allowable on the demonstrator in accordance with the general depreciation provisions in the law on the basis that it is "plant or articles". Subsection 56(3) would safeguard against any possible double deduction by reducing the cost of the demonstrator for depreciation purposes by the amount of any other deduction allowed or allowable in respect of the vehicle.

DATE OF EFFECT AND TRANSITIONAL ARRANGEMENTS

11. It is understood that in some cases this Office has accepted dealers treating demonstration vehicles as depreciable and not as trading stock. Vehicles first treated as demonstrators in income tax returns lodged after the date of issue of this Ruling should be treated as trading stock consistently with the terms of this Ruling. As to demonstration vehicles treated as depreciable in returns of income lodged before the date of this Ruling in situations inconsistent with the terms of this Ruling, taxpayers may choose to either:-

(i) continue to depreciate the vehicles for the rest of their effective lives; or

(ii) subject to the limitations in section 170 concerning the amendment of assessments (if applicable), seek amendment of earlier assessments to accord with the terms of this Ruling.

12. As to the date of effect of that part of the Ruling dealing with replacement price, this operates both prospectively and retrospectively. In the case of any retrospective operation, however, this will need to accord with the statutory limitations in section 170 on amendments of assessments.

B. "HOLDBACK AMOUNTS"

FACTS

13. A "holdback" arises where under an agreement between a motor vehicle manufacturer (or distributor) and a dealer, the manufacturer (or distributor) or an associate of the manufacturer (or distributor) credits to an account for, or on behalf of the dealer, a percentage of the purchase price of a vehicle delivered

to a dealer and makes a corresponding payment at a later time to the dealer. The purchase price of the vehicle to the dealer is usually increased to take account of the amount of the "holdback". In general, the arrangement between the two parties has the following characteristics:

(i) The amount of the "holdback" varies between 1% and 3% of the vehicle's purchase price.

(ii) Payments are made to the dealer at regular intervals of between 1 and 3 months.

(iii) Interest may be payable on the amount withheld.

(iv) Upon transfer of the vehicle to another dealer, the treatment of the "holdback" is negotiable between the original dealer and the second dealer.

(v) If the vehicle is returned to the manufacturer, the "holdback" amount is debited against the account.

(vi) The quantum of the "holdback" entitlement is less for some categories of ultimate customers.

14. The reason for "holdback" arrangements is not completely clear. The main reason usually advanced is to conceal from salespersons a component of gross profit so that the retail price is not lowered by negotiation to a level where the dealer earns a minimal gross profit on a sale.

15. The time at which a "holdback" receipt is derived by a dealer warrants clarification. Motor vehicle dealers are currently recognising this amount in their accounts at three different times:

. the time of receipt;
. the time of delivery of the vehicle to the dealer; or
. the point of retail sale to a customer.

16. Similarly, the time at which a manufacturer or distributor incurs an outgoing in terms of subsection 51(1) in making a "holdback" payment to a dealer also needs to be clarified.

RULING

When are "Holdback" Receipts Derived?

17. For income tax purposes, the method to be adopted in determining the amount of income derived by a taxpayer is that which "is calculated to give a substantially correct reflex of the taxpayer's true income" (The Commissioner of Taxes (South Australia) v. The Executor, Trustee and Agency Company of South Australia Limited (Carden's case) (1938) 63 CLR 108 at pp.152-4). Where a taxpayer carries on a business of trading in goods, as

motor vehicle dealers do, the accruals (or earnings) basis is the appropriate method of determining the amount of income derived (J. Rowe & Son Pty Ltd v. F.C. of T. (1971) 124 CLR 421; 71 ATC 4157; 2 ATR 497; Whitworth Park Co Ltd (In liq) v. I.R. Commissioners [1961] A.C.31).

18. Where a taxpayer is assessable on an accruals basis, the courts have considered that income is derived when a recoverable debt has been created and the taxpayer is not obliged to take any further steps before becoming entitled to payment (Farnsworth v. F.C. of T. (1949) 78 CLR 504; 9 ATD 33; Henderson v. F.C. of T. (1970) 119 CLR 621; 70 ATC 4016; 1 ATR 596; F.C. of T. v. Australian Gas Light Co & Anor 83 ATC 4800; (1983) 15 ATR 105) except where amounts are received or receivable in advance of goods being supplied or services being provided (Arthur Murray (N.S.W.) Pty Ltd v. F.C. of T. (1965) 114 CLR 314; 14 ATD 98; 9 AITR 673).

19. This Office considers that "holdback" income is derived by the dealer at the time a vehicle is purchased by the dealer from the manufacturer/distributor or finance company. Where a vehicle is acquired under a floor plan arrangement, as in the Suttons Motors Case, the dealer purchases the vehicle, and the "holdback" is derived, at the time of the retail sale.

20. The "holdback" amount is related to the price at which a vehicle is purchased by the dealer. At the time the dealer purchases the vehicle, the "holdback" amount is a recoverable debt and the dealer does not have to take any additional steps to be entitled to payment. Entitlement to the "holdback" amount is not conditional on a retail sale of the relevant vehicle. At the time of purchase by the dealer, there is a legal entitlement to the "holdback" even though that right may be a defeasible right.

21. In the few cases where a dealer receives a "holdback" amount in relation to a vehicle before it purchases the vehicle, this Office accepts that the "holdback" is not derived until the purchase. Most dealers do not recognise the "holdback" amount as income in their books of account until the time of the retail sale (which is also the time of the purchase under a floor plan arrangement). In these circumstances, the Arthur Murray Case indicates that the "holdback" amount has not been earned, and therefore derived, at the time the "holdback" is received.

22. There are some factors which suggest that the holdback receipt is derived at the time of delivery of the vehicles to the dealer, viz:

(i) the "holdback" amount is credited to the account of the dealer at delivery;

(ii) "holdback" is paid at agreed intervals even if the relevant vehicles are still held by the dealer and have not been sold (which means that vehicles acquired under a floor plan arrangement have not been purchased); and

(iii) the payment of interest by some manufacturers is calculated from the delivery date.

23. However, the strict legal position is that the dealer is not required, at the time of delivery of vehicles, to purchase the vehicles which it has under a floor plan arrangement. If a vehicle is not purchased by the dealer, there is no entitlement to the "holdback" receipt. Thus, before purchase, the amount of the "holdback" receipt is not recoverable by the dealer as a debt and the dealer would have to take additional steps to be entitled to payment of the "holdback" receipt.

24. As to the trading stock provisions in the income tax law, where a vehicle is purchased at a price which includes a "holdback" receipt, a deduction is allowable at the time of purchase for the full amount of the outgoing, viz. the gross price. If that vehicle represented trading stock on hand at the end of an income year, the appropriate value, under the cost price method, is the gross price paid.

When are "Holdback" Payments Incurred?

25. The question also arises at what time does a manufacturer (or distributor) who pays a "holdback" amount to a dealer incur an outgoing of that amount for the purposes of subsection 51(1). In the absence of a floor plan arrangement, the manufacturer (or distributor) is definitively committed to making the payment, and completely subjects itself to the payment (cf. F.C. of T. v. James Flood Pty Ltd (1953) 88 CLR 492 at p.506), at the time the vehicle is sold to the dealer. However, since the Suttons Motors Case, this office has accepted that dealers acquiring vehicles under floor plan arrangements are, as a matter of commercial substance, definitively committed to the ultimate purchase of the vehicles from the time of delivery. Consequently, where a vehicle is marketed under a floor plan arrangement this Office accepts that the "holdback" outgoing is incurred at the time the vehicle is delivered to the dealer.

DATE OF EFFECT AND TRANSITIONAL ARRANGEMENTS

26. As this Office has accepted different treatments of "holdback" receipts by dealers, that part of the Ruling concerning "holdbacks" applies prospectively. That is, the treatment outlined in this Ruling should be adopted in respect of purchases of vehicles by the dealer after the date of issue of this Ruling. If a dealer has included a "holdback" receipt in its assessable income in a year of income before the income year in which it is derived in accordance with the terms of this Ruling, the dealer may either:

(a) make no alteration to that assessment and not include the receipt again in assessable income of any later year; or

(b) make the following alterations, namely:

(i) the "holdback" receipt should be included in the dealer's assessable income in the later income year;

(ii) subject to the limitations in section 170 concerning the amendment of assessments (if applicable), the assessment in the earlier income year should be amended to exclude the receipt from assessable income.

27. As this Office understands it, manufacturers (or distributors) at present claim tax deductions for "holdback" payments at the time of sales of vehicles to a dealer or, where vehicles are marketed under floor plan arrangements, at the time of delivery. Manufacturers (or distributors) who are not presently preparing their income tax returns on this basis should take steps to ensure that future claims are consistent with the terms of this Ruling.

C. WARRANTY ARRANGEMENTS

FACTS

28. Several issues have arisen requiring clarification:

(1) The attempted deferral of income from that portion of the sale price of both new and used vehicles which ostensibly relates to the provision of a warranty or a free first service. The attempted deferral of income may arise:

(i) in respect of a manufacturer's or distributor's sales of new vehicles to a dealer under warranty;

(ii) in respect of arrangements made by a dealer with a retail customer for the free first service of a new vehicle; or

(iii) in respect of sales of new or used vehicles by a dealer to a retail customer under warranty.

(2) Whether a deduction is allowable to a dealer for an amount representing a reasonable estimate of the warranty repair costs expected to arise in relation to vehicles sold during a year of income.

(3) The assessability in the hands of a dealer of a claim for warranty indemnity by the dealer which has not been credited, paid or approved for payment by the manufacturer or distributor at the end of a year of income.

29. There is a wide range of warranties which may apply to motor vehicles sold by a dealer. Taxation Ruling No. ST 2108 describes

in some detail warranties which may exist in respect of the sale of goods. State and Commonwealth legislation imposes certain statutory obligations in the form of implied conditions and warranties. In addition, many manufacturers and distributors adopt the practice of issuing written express warranties on the vehicles they manufacture or distribute respectively. Under the express warranties a manufacturer or distributor commonly warrants that its products are free from defects arising from faulty materials and faulty workmanship and that defective parts will be repaired or replaced free of charge for a specified time period. Similarly, used car dealers commonly give express warranties on the vehicles they sell.

30. Manufacturers and distributors often authorise particular service organisations, including in some cases dealers to whom they sell their vehicles, to carry out repairs or replacements when consumers submit defective vehicles and claim to be protected by an express warranty issued on the vehicle.

RULING

The Attempted Deferral of Income

31. The first issue (in paragraph 28 above) requires a consideration of the decision of the High Court of Australia in the Arthur Murray Case. There the taxpayer received amounts in advance for a specified number of dance lessons to be given over a period of time. In the taxpayer's books of account, fees were recognised as income when the lessons to which the fees related were taught. In their joint judgment, Barwick CJ, Kitto and Taylor JJ said that the ultimate enquiry was whether what had taken place was enough to satisfy the general understanding among practical business people of what constitutes a derivation of income. This was not merely a problem of ascertaining established bookkeeping methods, but bookkeeping methods nevertheless provided evidence of what is meant by the concept of "income derived".

32. It was an agreed fact that, according to established accounting principles, in the case of a business either selling goods or supplying services, amounts received in advance of the goods being delivered or the services being supplied are not regarded as sales or gross earned revenue. Their Honours said they had not been able to see any reason which should lead the courts to differ from accountants and commercial men on the point. Accordingly it was held, in effect, that the company was correct in bringing to account as assessable income only such fees as had been "earned" during the year of income, i.e., as the dance lessons were given.

33. It has been suggested that the Arthur Murray Case is authority for the proposition that, where a vehicle is sold subject to a warranty, a portion of the sale price relates to the warranty and is not derived at the time of the sale. This Office does not accept this proposition. Motor vehicle manufacturers, distributors or dealers do not receive any amount for a warranty.

Rather, they receive the price of a motor vehicle under a contract for the sale of goods and a warranty is a term of the contract.

34. In the case of a sale by a manufacturer (or a distributor) of a new vehicle under warranty to a dealer, unlike the facts in the Arthur Murray Case, the manufacturer (or distributor) does not have to provide any service to earn the sale proceeds as income. If the manufacturer (or distributor) is not called on to meet any claim under the warranty, no refund is required to be made to the dealer of any part of the sale proceeds paid to the manufacturer (or distributor). In terms of the Australian Gas Light Company Case the manufacturer (or distributor) is not obliged to take any further steps (e.g. in relation to warranty) before becoming entitled to the whole of the sale proceeds as income. At the time of sale of the vehicle to the dealer it is not known whether any claim will ever be made under the warranty. The Arthur Murray Case is factually different and no part of the sale price of the vehicle may be sought to be hived off by the manufacturer (or distributor) and deferred until repairs are made, if required, under warranty.

35. In the case of a sale of a new or used vehicle by a dealer to a retail customer, for the same reasons advanced in paragraph 34 above, the entire sale proceeds are derived as income by the dealer and no part of the sale price may be sought to be hived off by the dealer and deferred until repairs are made, if required, under warranty.

36. As to a dealer's arrangements with a retail customer to provide a free first service of a new vehicle, the costs of the service are borne by the dealer with no reimbursement being received from the manufacturer or distributor. No payment is made by the retail customer/purchaser of the vehicle for the service. The first service is normally performed within 2 months from the date of sale. This Office does not accept that some part of the sale proceeds is attributable to the dealer's undertaking of the free service even though, for accounting purposes, a portion of the sale proceeds may be credited to a "new car deferred service income account". On the contrary, it is the view of this Office that no portion of the sale price relates to the provision of the free first service and that the whole of the sale proceeds are derived by the dealer as assessable income at the time of the sale.

37. If a manufacturer, distributor or dealer purports to enter into a warranty contract which is separate from the contract for the sale of the vehicle with an allegedly discrete consideration, the arrangement should also be treated as set out in paragraphs 33 to 35 above. An example of such an arrangement is an "extended warranty" under which a manufacturer, distributor or dealer promises to repair or replace defective components for a certain period after the expiration of the so-called "standard warranty period" if the retail customer pays additional consideration. It is not accepted that the warranty can be severed from the sale of the vehicle. A warranty is distinguished from a service contract

in that it is essentially a term of a sale. A warranty does not arise unless a sale has taken place. The fact that a company may purport to provide for a warranty as a separate contract does not alter the basic nature of warranty charges. Accordingly, any consideration which is said to relate to warranty obligations is derived at the time of sale. The fact that expenses in compliance with a warranty may be incurred in the future under various contingencies does not alter the time at which the income is derived. There is no basis for any claim that warranty charges are earned over the period of the warranty.

Deductibility of an Estimate of Warranty Repair Costs

38. The second issue (in paragraph 28 above) concerns the deductibility of an amount representing a reasonable estimate of the warranty repair costs expected to arise in relation to vehicles sold during a year of income. Such a provision does not impose any liability on the dealer to incur expenditure until the contingency arises (i.e. a buyer approaches a manufacturer, distributor, or dealer, as the case may be, with a request for repair). Until that time the liability is "no more than impending, threatened or expected" (Dixon J in New Zealand Flax Investments Ltd v. F.C. of T. (1938) 61 CLR 179 at 207; 5 ATD 36 at 49; 1 AITR 366 at 378) and is therefore not deductible under subsection 51(1). Warranty repair costs will be incurred and are deductible in the course of effecting the repairs, e.g. when the dealer purchases spare parts and assumes a liability to pay repairers' wages.

When is a Warranty Indemnity Assessable?

39. The third issue (in paragraph 28 above) concerns the assessability in the hands of a dealer of a claim by the dealer for warranty indemnity which has not been approved for payment by the manufacturer or distributor at the end of a year of income. Warranty indemnity claims arise where the dealer has carried out repairs under a manufacturer's or distributor's warranty, and seeks recompense from the manufacturer (or distributor) for parts replaced and the work carried out. Claims for warranty indemnities may not be accepted by the manufacturer or distributor in full where, for example, the defect is due to misuse of the vehicle, parts replaced have a resale value or the repair time is excessive. This Ruling covers only those claims where an arrangement exists not to indemnify or reimburse the dealer until "approval" is made by the manufacturer. The approval is not procedural but is substantive.

40. Applying the principles set out in paragraphs 17 and 18 above to warranty indemnities, a debt is created and the dealer is not required to take any further steps before being entitled to payment when the claim is approved for payment by the manufacturer or distributor. Until this time the dealer has no legal entitlement to the warranty indemnity. Thus the warranty indemnities are derived and represent assessable income when they are approved by the manufacturer or distributor. Crediting or

payment is not necessary for the derivation of a warranty indemnity by a dealer although it will often occur at the same time as approval.

DATE OF EFFECT AND TRANSITIONAL ARRANGEMENTS

41. Again, this Office has accepted different treatments for income tax purposes of attempted deferral of income for warranty services. This part of the Ruling applies to all sales of new or used vehicles occurring after 2 months from the date of issue of this Ruling.

42. This Office has never accepted that manufacturers, distributors or dealers may deduct estimated amounts for warranty repair costs. Assessments made on the basis of estimated repair claims may, subject to the statutory limitations in section 170, be amended to give effect to this Ruling.

43. As to assessability of warranty indemnities in the hands of dealers, the treatment outlined in this Ruling should be adopted in respect of claims made to manufacturers or distributors after the date of issue of this Ruling. If a dealer has included warranty indemnities in its assessable income in an income year before the income year in which it is derived in accordance with the terms of this Ruling, the dealer may either:

(a) make no alteration to that assessment and not include the amount again in assessable income of any later year; or

(b) make the following alterations, namely:

(i) the indemnity amount should be included in the dealer's assessable income in the later income year;

(ii) subject to the limitations in section 170 concerning the amendment of assessments (if applicable), the assessment in the earlier income year should be amended to exclude the indemnity from assessable income.

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