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**STATE BOARD OF EQUALIZATION**

December 2, 1991

Dear [X]

This is in response to your letter dated October 22, 1991 regarding whether the exemption provided by Revenue and Taxation Code section 6376.1 from the 1-1/4 percent tax rate increase that went into effect on July 15, 1991 applies to your lease. Senior Tax Auditor R. D. Tucker of our Evaluation and Planning Division responded to your letter in a letter dated November 8, 1991. In that letter, Mr. Tucker explained that your lease does not qualify for the exemption provided by section 6376.1. I am writing you this additional letter because, as I understand it, you have insisted on a response from the legal staff.

Section 6376.1 provides an exemption from the 1-1/4 percent tax rate increase for certain sales and leases. As relevant here, one of the requirements to qualify for the exemption is that the lessor is obligated to lease the property for an amount fixed by the lease. As explained by Mr. Tucker, we interpret "an amount fixed by the lease" to mean that all payments under the lease must be specified, including the amount of tax the lessee is required to pay to the lessor. You refer to Revenue and Taxation Code section 6011, which defines "sales price" as the total amount for which tangible personal property is sold or leased. You note that subdivisions (c) (5) and (c)(6) of section 6011 exclude from "sales price" certain sales taxes. Initially, I note that the sales taxes excluded from the definition of sales price by subdivisions (c)(5) and (c)(6) of section 6011 are sales taxes imposed by any city, county, city and county, or rapid transit district. It does not refer to sales taxes imposed by the state. More important, however, is that the definition of "sales price" is not at issue, but rather the definition of "an amount fixed by the lease."

The statute itself specifically defines "sales price." On the other hand, the statute does not contain a specific definition of "an amount fixed by the lease." Nevertheless, every time an exemption using that term has been adopted by the Legislature, we have interpreted it in the same manner. (See, e.g., Rev. & Tax. Code §§ 6376 (exemption from the 1/4% earthquake tax), 7261(a) (7), 7262(a)(6) (exemptions from transactions and use tax ordinances which are periodically adopted by districts within this state).) Of course, in adopting section 6376.1, the Legislature is deemed to know the longstanding interpretation of equivalent provisions by this Board, the agency charged with administering the Sales and Use Tax Law.

You also cite Business Taxes Law Guide Annotation 330.3760 (8/5/65). This annotation does not define “an amount fixed by the lease” and does not directly apply to section 6376.1. The annotation relates to a grandfather clause exemption that was adopted in conjunction with the 1965 change in application of sales and use tax to leases of tangible personal property. The annotation to which you refer applies to circumstances where, prior to the 1965 statutory changes, no tax whatsoever would have applied to the lease receipts. Thus, the lessor and lessee would not have provided for collection or payment of taxes in their lease. Nevertheless, as you note, the annotation explains that the exemption applied only when the lessor and lessee were “bound in all respects to perform fixed obligations for fixed periods.”

In summary, the exemption provided by section 6376.1 does not apply if the parties have contracted for the lessee to pay the lessor applicable taxes. The applicable tax on a lease which is a continuing sale is the tax rate in effect at the time of use. The intent of the Legislature in adopting section 6376.1 was to exempt from the increase those leases where the parties neither contemplated an increase in the tax rate nor provided for the lessee to pay amounts of such increases to the lessor. Under the lease about which you inquire, the parties obviously anticipated that there might be a change in the tax rate and, under section 12, the lessee specifically agreed to pay any such increase in taxes to the lessor. Therefore, the exemption provided by section 6376.1 does not apply.

Sincerely,

David H. Levine  
Senior Tax Counsel

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