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450 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)  
Telephone: (916) 324-2614  
FAX: (916) 323-3387

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June 27, 1996

E. L. Sorensen, Jr.  
*Executive Director*

Mr. J--- T. L---  
--- & --- LLP  
XXX --- Avenue  
--- ---, NY XXXXX

Re: Unidentified Taxpayer

Dear Mr. L---:

Your letter dated March 25, 1996, to Mr. Gary J. Jugum, Assistant Chief Counsel, has been referred to me for response. You ask whether tax applies to the following transaction:

“Company A currently provides motor vehicle lease financing in California. The typical transaction is structured as follows:

- ❖ A motor vehicle dealer (“Dealer”) submits a credit application for a prospective lessee to Company A to determine whether Company A will purchase a lease entered into between the Dealer (as initial lessor) and the prospective lessee;
- ❖ Company A approves the credit, a lease (the “Lease”) is executed between the Dealer, as lessor, and the applicant, as lessee;
- ❖ Any sales/use tax due on lease downpayments and first month’s rent are collected and remitted to the State by the Dealer who is the initial lessor and the State’s fiduciary for purposes of collecting and remitting the tax;
- ❖ Company A acquires the Lease and the related leased vehicle (the “Leased Vehicle”) from the Dealer and the applicable sales and use taxes are paid or the proper resale certificates are given by Company A in connection with the acquisition of the Leased Vehicle and Lease. Further, the certificate of title to and registration of the vehicle are issued in the name of Company A to evidence its ownership of such Leased Vehicle; and

- ❖ Company A (as assignee of the Lease) becomes the lessor of the Leased Vehicle. From this point forward, Company A collects and remits the applicable sales and use tax from the lessee to the state. . . . Company A would like to change its typical transaction structure as described herein. Company A plans to use a titling trust structure for titling and registering Leased Vehicles. The essential elements of the structure are as follows:
- ❖ Company A will create a trust (“Titling Trust”) that will obtain all applicable licenses in California. The activities of the Titling Trust will primarily be limited to acquiring and serving as record holder of legal title to Leased Vehicles and the Leases;
- ❖ the certificates of title to the Leased Vehicles will be issued in the name of the Titling Trust or in the name of the trustee for the Titling Trust (the “Trustee”) and the Titling Trust (as assignee of the Leases) will become the lessor under the leases. The primary assets of the Titling Trust will consist of (i) the Leased Vehicles; (ii) the Leases and (iii) proceeds of the foregoing; and
- ❖ the applicable sales and use taxes will be paid or proper resale certificates will be given by the Titling Trust (or Trustee, if applicable).

The Titling Trust structure is essentially the same as the current structure described above except that the Trust, instead of Company A, will acquire the Leased Vehicles and the Leases. The implementation of this structure will not adversely affect, or otherwise have any impact on, lessees who will continue to maintain possession of the Leased Vehicles.

“As provided above, the Leased Vehicles will be owned by the Titling Trust (through the Titling Trust or the Trustee being named as owner on the certificates of title) and Company A will own 100 percent of the beneficial interest in the Titling Trust. As a result, Company A will not have a direct interest in the Leased Vehicles or the Leases but instead will be entitled to receive the cash proceeds generated from the Titling Trust assets. Lessees will not be affected by the new titling and registration procedures. Company A (or its subservicer) will be the Servicer for the Trust and continue to provide lease related services to the lessee. . . . Company A may from time to time transfer all or a portion of its beneficial interest in the Titling Trust. Such transfers are intended to facilitate the financing by Company A of its motor vehicle leasing business and can take the form of a pledge or sale to one or more third parties (each, a “Transferee”). . . .”

You ask:

“1. Whether the California sales and use tax will be imposed on the Titling Trust’s acquisition of title to the Leased Vehicles and the Leases from the Dealers if the Titling Trust (or the Trustee) is properly registered for sales and use tax purposes with the State of California? Is the Trust or the Trustee to be considered the state’s fiduciary who must be registered for California sales and use tax purposes?”

“2. Whether the gross receipts received by Company A from the transfer of beneficial interests in the Titling Trust are subject to the California sales and use tax?”

“3. Whether the gross receipts received by the Transferees from subsequent transfers of the beneficial interests in the Titling Trust are subject to the California sales and use tax?”

### DISCUSSION

As you know, retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

With respect to the leases, we assume that none of the property transferred constitutes mobile transportation equipment as defined in Revenue and Taxation Code section 6023. A lease of tangible personal property in California is a continuing sale and purchase unless the lessor leases the property in substantially the same form as acquired and timely pays sales tax reimbursement or use tax measured by the purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1, 6010(e)(5), 6010.1; Reg. 1660, subds. (b)(1) and (c)(2).) When a lease is a continuing sale and purchase because either or both of the foregoing conditions have not been satisfied, the lease is subject to use tax measured by rentals payable. (Reg. 1660(c)(1).) The lessee owes the tax, which the lessor is required to collect from the lessee and pay to this board. (Rev. & Tax. Code §§ 6202, 6203, 6204; Reg. 1660(c)(1).)

If a lease which is a continuing sale and purchase is assigned, the new lessor must continue to collect use tax from the lessee measured by rentals payable, whether or not title to the property is transferred. (Reg. 1660(c)(9)(A).) Where an assignment of such a lease accompanies a sale of the leased property, the assignee assumes the position of the lessor. The assignee is required to hold a California seller's permit and is obligated to collect, report and pay

tax on the rentals payable. (Rev. & Tax. Code § 6203; Reg. 1660(c)(9)(D).) Since the sale to the new lessor is a sale for resale and not a sale at retail, it is not taxable. (Rev. & Tax. Code § 6007.)

We assume that the Dealer is leasing property in transactions which are continuing sales and purchases, subject to use tax measured by rentals payable. When these leases are assigned to the Titling Trust, the Titling Trust cannot elect to pay tax measured by the purchase price of the property. Instead, the Titling Trust must continue to collect use tax from the lessee measured by the rentals payable. When there is a sale of a vehicle subject to an existing lease, the Titling Trust is purchasing the property for resale. Therefore, the Titling Trust is required to hold a California seller's permit and is obligated to collect, report and pay tax on the rentals payable. Since the sale to the Titling Trust is a sale for resale, it is not subject to tax.

With regard to the transfer of the beneficial interest in the Titling Trust, because you have not provided us with a copy of the trust documents and other documentation relevant to the transactions in question, we are unable to determine what you mean by a transfer of all or a portion of the beneficial interest in the Titling Trust. However, if the transfer of the beneficial interest constitutes a sale of tangible personal property, it appears to be a sale for resale as discussed above. If the transfer of the beneficial interest does not constitute a sale of tangible personal property, the sale is not subject to tax.

If you have any further questions, please write again. If you do so, please provide us with a copy of all documentation relating to the trusts as well as all other relevant documentation pertaining to the transactions in question.

Sincerely,

Sophia H. Chung  
Tax Counsel

SHC:rz

cc: Out-of-State District Administrator -OH