

**STATE BOARD OF EQUALIZATION**

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November 22, 1983

Mr. K--- J. C---  
E---, K--- & M---  
Attorneys at Law  
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--- --- --- Bldg.  
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Dear Mr. C---:

This is in response to your letter of September 29, 1983 relative to the application of the California Sales and Use Tax Law to the following described sale and leaseback transaction.

“Our client is the controlling shareholder of both corporation “A” and corporation “B”. Corporation “A” and corporation “B” have both been in existence for over three (3) years. Corporation “A” purchases equipment and leases it to the general public in substantially the same form. Corporation “B” is engaged in a similar business in a different location. Both businesses are operated entirely separate from each other. Corporation “A” purchased numerous items of equipment upon which no sales or sales reimbursement tax or use tax measured by the purchase price has been paid. As a result, corporation “A” is being taxed based upon its gross receipts from the rentals of such equipment to the general public. The business is quite successful, and as a result the receipts from rentals of the equipment are quite high in comparison with the actual fair market value of the equipment. Therefore, corporation “A” wishes to sell the equipment to corporation “B”, pay a sales tax upon that sale, and then lease the equipment back from corporation “B”. Both the sale from corporation “A” to corporation “B” and the leaseback from corporation “B” to corporation “A” would be based upon the actual fair market value of the equipment at the time of the sale and leaseback transaction.”

In our opinion, the foregoing transaction comes within the purview of Revenue and Taxation Code Section 6006, subdivision (g)(5) [see also Regulation 1660(c)(2) and (3), copy enclosed]. Pursuant to those provisions, where sales tax reimbursement has been paid by the lessor corporation based upon actual fair market value at the time of the sale to it, no tax is due based on

rentals payable. Additionally, since the property is considered leased in a tax paid status, subsequent subleases of the equipment to the general public by the lessee corporation are, likewise, not subject to tax [Reg. 1660(c)(5)].

Very truly yours,

Les Sorensen  
Tax Counsel

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Enclosure