



STATE BOARD OF EQUALIZATION

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July 26, 1999

E. L. SORENSEN, JR.
Executive Director

Mr. H--- B---
Vice President
R--- T--- Corporation
XXXX - - - - -
---, CA XXXXX

Dear Mr. B---:

This is in reply to your letter of April 28, 1999. We apologize for the delay in our response.

We understand that "as a part of a benefit package for an employee" your "company intends to finance purchase of an automobile for the personal use of the employee." Your plan is for your corporation to issue a resale certificate to an automobile dealer, then to lease the vehicle to your employee for 36 months. The employee would not receive title to the vehicle at the end of the lease term. You contemplate that the employee (lessee) would reimburse the corporation by paying a monthly lease fee, which would include use tax based upon the lease fee.

In circumstances of this type, where an employer enters an accommodation transaction with an employee, the employer may not issue a resale certificate to acquire the vehicle. The sale of the vehicle from the dealer to the employer is subject to tax.

For sales and use tax purposes, a lease transaction of the type in question is not regarded as a market transaction. The lease is, as you describe, a part of a benefit package. The employee performs services for the employer in exchange for which the employer furnishes the employee with wages and benefits. It cannot be said that the true rental amount is only the monthly lease fee paid by the employee. By definition, the lease transaction is a benefit to the employee. The employee has performed services to earn that benefit, and the value of the services performed should be included in the measure of tax -- reflecting the fact that the lease transaction is part of an overall compensation package.

Since there is no way to identify the true rental price, for sales and use tax purposes we would treat the employer as the consumer of the vehicle. As stated, tax would apply to the price charged by the dealer to the employer. The "lease" transaction would not be a "resale in the regular course of the business" of the employer. Tax would be due on the purchase price, not the lease receipts.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

Mr. H--- B---

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July 26, 1999
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