



STATE BOARD OF EQUALIZATION

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Executive Director

August 25, 1995

Mr. C--- E. S---
XX --- --- Lane
---, CA XXXXX

Re: C--- E. S---
No Permit Number

Dear Mr. S---:

This is in response to your letter received by us on June 15, 1995 regarding the application of tax to the lease of a vehicle. You state:

"In March 1994 I took delivery of a 1994 GMC Yukon which I am leasing thru A--- R---, Inc., P.O. Box XXXX, M--- L---, New Jersey XXXXX. At the time of delivery my residence was --- ---, IL. I paid the sales tax on the base cost of the vehicle to the State of Illinois in one lump sum at the time of delivery. In January 1995 I relocated to D---, CA and the leasing company started to charge me approximately \$40.00 per month for California sale[s] tax."

You indicate your belief that you should not owe tax on the lease receipts because your relocation to California was more than 90 days after you began leasing the vehicle.

DISCUSSION

Except as explained below, the granting of possession by a lessor to a lessee is a continuing sale by the lessor, and the possession of tangible personal property by a lessee is a continuing purchase for use in this state by the lessee with respect to any period of time the leased property is situated in this state, without regard to the time or place of delivery of the property to the lessee. (Rev. & Tax. Code § 6010.1, Reg. 1660(b)(2).)

We assume that the lease of the vehicle to you by A--- R--- is a true lease, and not a sale at inception. (See Reg. 1660(a)(2)(A).) In the case of a true lease that is a continuing sale and purchase, the applicable tax is generally a use tax upon the use of the property in this state, and the tax, measured by rentals payable, is imposed on the lessee. (Reg. 1660(c)(1).) The lessor is required to collect the applicable use tax from the lessee at the time rentals are paid by the lessee. (Id.)

A lessor leasing tangible personal property in substantially the same form as acquired may elect to pay California tax or tax reimbursement measured by its purchase price. (Reg. 1660(c)(2).) A lease of such California tax-paid property is not a taxable continuing sale or purchase. (Reg. 1660(b)(1)(E).) The lessor may make the election by either paying the tax or tax reimbursement to its vendor when purchasing the property, or by paying use tax directly to the Board with its timely return for the reporting period in which the property is first placed into rental service. (Reg. 1660(c)(2).) When a lessor makes an election to pay tax on the purchase price, it is making an irrevocable election not to pay tax on rental receipts. (Reg. 1660(c)(3).)

Subdivision (c)(8) of Regulation 1660 explains that the lessor may make such an election with respect to certain transactions in which the lessor has paid sales or use tax or sales tax reimbursement to another state prior to leasing the property in that state. However, unless otherwise provided by statute, the lessor can make an election to pay tax on its purchase price only if its use in California would be subject to use tax. (Cf. Rev. & Tax. Code § 6094.1.) California use tax is imposed with respect to property purchased out of state only if the property was purchased for use in California.

A vehicle purchased outside of California is presumed to have been purchased for use in California if it is brought into this state within 90 days after its purchase. (Rev. & Tax. Code § 6248, Reg. 1610(e)(1).) On the other hand, property used outside California for over 90 days prior to its entry into California is not regarded as purchased for use in California. Thus, if a lessor's property is used outside California over 90 days prior to its entry into California, the lessor owes no use tax on its use of the property; therefore, the election to pay tax on the purchase price is not available to such a lessor. Any lease of the property by such a lessor is a continuing sale and purchase in California with respect to which the lessee owes use tax, which the lessor must collect and pay to this state. Since the lessor owes no tax on its own use, the lessor has no California tax liability against which to take a credit for any tax paid by it to another state. (Reg. 1660(c)(8).)

You indicate that you began leasing the vehicle in March of 1994 in Illinois, and that the vehicle did not enter California until January of 1995, when you relocated to California. Since the vehicle was used outside of California for over 90 days prior to its entry into this state, A--- R--- is not regarded as having purchased the vehicle for its use in California. This means that A--- R--- would owe no California use tax on its own use of the vehicle in this state, and thus the option of paying tax on the purchase price of the vehicle is not available to it. The lease

constitutes a continuing sale and purchase, for which you owe, and A--- R--- must collect, use tax on the lease receipts.

We assume that your payment of tax to which you refer was actually either reimbursement to A--- R--- for tax or tax reimbursement it paid, or it was a payment made to Illinois on behalf of A--- R--- for tax liability imposed upon and owed by A--- R--- on its purchase price of the vehicle. You may not take a credit against your California use tax liability for any tax paid by or paid on behalf of A--- R--- on its purchase price of the vehicle.

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

Enclosure

cc: Oakland District Administrator
Out-of-State District Administrator
Ms. Lynn Whitaker, Senior Tax Auditor