



STATE BOARD OF EQUALIZATION

916-445-5550

May 20, 1988

This is in response to your letter dated March 31, 1988 regarding the application of sales tax to the sale of signs for lease. You set forth the following facts:

"I would like to introduce you to our company, --- is in the process of becoming a franchisor in the State of California. Our primary business will be the manufacturing of complete real estate signs including frames, signs, and stakes. These completed packages will then be sold to our franchisee structure. The franchisee will in turn rent these completed signs to local real estate offices. The franchisees' service will also include the placement and removal of the signs.

"We, as the franchisor, intend to charge our franchisees sales tax on each sign they purchase. As you will see by the enclosed brochure, all of the sign packages except models R-8 and R-9 carry no rider for attachments. In the case of models R-8 and R-9, which in fact carry riders, the franchisee will have a choice of twenty riders which are included in the sale price. There will be occasions when the riders may be changed by the franchisee but this will not effect the value of the sign.

"All signs purchased form --- will be leased by the franchisees to their consumers in the same fashion as acquired from us. The signs may not be modified but may include an option to change riders.

"--- the franchisor has made the preliminary decision to charge the appropriate tax for the County in which our franchisee is located."

The lease of tangible personal property is a "sale" and "purchase" unless the property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or has timely paid use tax measured by the purchase price of the property. (Rev. & Tax. Code §§ 5006(g)(5), 5010(e)(5), Reg. 1660(c)(2).) A lease that is a sale and purchase within this definition is subject to use tax on the lessee, which the lessor must collect and pay to the state. (Rev. & Tax. Code S§ 6201, 6202, 6203, 6204, Reg. 1660.) Thus, when a lessor leases property in substantially the same form as acquired, the lessor may elect to pay sales tax reimbursement to the lessor's vendor or elect to pay use tax measured by purchase price timely with the return of the

lessor for the period during which the property is first placed in rental service, and no further tax would be due on the lease. (Reg. 1660(c)(2).) If the lessor does not make one of these two elections, or if the property is not leased in substantially the same form as acquired by the lessor, use tax applies to the lease measured by the rentals payable. (Reg. 1660(c)(1).)

The initial question under your facts is whether the signs you sell will be leased in substantially the same form as acquired. If not, and if your purchasers, the lessors, will make no use of the signs except to lease them, then your sale of signs is a sale for resale and would not be subject to tax. (Rev. & Tax. Code §§ 6007, 6051.) If this were the case, your purchasers would be required to hold seller's permits and you would be advised to take resale certificates from them. (Rev. & Tax. Code §§ 6066, 6091, Reg. 1668.)

The general rule for determining whether property is leased in substantially the same form as acquired is that if the value of the property as leased is substantially in excess of the value of the property as acquired, the property is not leased in substantially the same form as acquired. (Business Taxes Law Guide Annotation 300.3900 (2/17/67).) In essence, if the property is leased in a form that requires little or no fabrication by the lessor we regard the property to be leased in substantially the same form as acquired. (See Business Taxes Law Guide Annotation 330.3920 et seq.)

As we understand your facts, the lessor will lease the signs in the same form as acquired except that the lessor may have several riders for certain signs and would change the riders depending on the lessee's desires. We assume that these changes require very little effort. Based on this assumption, we conclude that the signs are leased in substantially the same form as acquired and that your purchasers, the lessors, may elect to pay you sales tax reimbursement or to pay use tax measured by purchase price. If they do so, their leases of the signs would not be sales and purchases under the Sales and Used Tax Law and would not be subject to sales or use tax.

You indicate that you have decided to charge the appropriate tax for the county in which the purchaser is located. In counties in which the total sales or use tax rate is over 6 percent, special districts have imposed a transactions (sales) and use tax (see Rev. & Tax. Code §.7251 et seq.) and I assume you mean this district tax imposed over 6 percent when you refer to the appropriate tax for the county in which your franchisee is located. If the district transactions tax applies to a particular transaction, you would owe that tax and could collect reimbursement from your customer. If the district use tax applies to a particular transaction, you may not be required to collect it from your customer and pay it to the state depending on the facts involved in that transaction. However, even if you are not otherwise required to collect the tax, you may do so. Since you wish to charge the appropriate tax for the district in which property will be used, it is not necessary to analyze whether you would otherwise be required to do so.

In summary, we conclude that your purchasers will lease the signs purchased from you in substantially the same form as acquired. They may therefore elect to pay you sales tax reimbursement or timely pay use tax measured by purchase price and lease the signs with

no further sales or use tax being due. If they make no use of the signs other than leasing, they may also issue you resale certificates and collect use tax from their lessees measured by rentals payable. If they do not issue you resale certificates when purchasing the signs, the appropriate total sales and use tax rate would be the rate of the district in which the property will be used. You may collect the tax imposed by the district in which the property will be used even if you do not otherwise require to do so.