



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-8208

MEMBER
First District

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

October 21, 1993

BURTON W. OLIVER
Executive Director

Mr. D--- M. D---
A--- S--- T--- C--- Inc.
XXXX --- Road, Suite XXX
---, CA XXXXX

Dear Mr. D---:

This is in response to your letter to Mr. Jugum regarding leases of passenger vehicles and motor transportation equipment.

You quote section 0617.20 of the Field Audit Manual which provides that if a vehicle is registered in the name of the lessee only, tax liability may not be measured by rental receipts and the transaction will be regarded as a retail sale subject to tax. You also quote from page 19 of Tax Tips Pamphlet #34 under "Sales to Leasing Companies - Passenger Vehicles, Etc." which, in part, repeats this rule with respect to passenger vehicles. You believe that there is an inconsistency because this section of the Tax Tip Pamphlet refers only to vehicles which are excluded from the definition of mobile transportation equipment (MTE) while the Field Audit Manual is referring to both passenger vehicles and mobile transportation equipment.

The main point of the section in the Tax Tips Pamphlet quoted in your letter is that vehicles which are excluded from the definition of MTE may be sold for resale under certain conditions if the purchaser intends to lease the property. MTE is not sold for resale when the purchaser intends to lease the MTE because a lease of MTE is not a continuing sale or purchase.^{1/} Rev. & Tax. Code §§ 6006(g)(4) and 6010(e)(4). Therefore, MTE could not be included in the rules set forth in the section you quoted from the Tax Tips Pamphlet. The rule regarding registration in the only lessee's name applies, however, to both MTE and passenger vehicles.

^{1/} A purchaser, however, who intends to limit the use of the MTE to leasing may issue a resale certificate when purchasing the MTE. Rev. & Tax. Code § 6094(d).

You also ask us to explain the legal basis for the Board's policy and advise you if the policy applies regardless of whether the seller/lessor is licensed as a motor vehicle dealer or a lessor-retailer.

The rule that tax liability may not be measured by rental receipts if a vehicle is registered in the name of the lessee only is set forth in detail in Regulation 1610(d) which provides in part:

"(d) LEASED VEHICLES. (Leases of Mobile Transportation Equipment, see Regulation 1661.)

"(1) LEASE OF VEHICLES. The general rules respecting the application of tax to leases apply to leases of vehicles, subject to the following special requirements in the case of vehicles:

"(A) A certificated dealer sells a vehicle to a lessor who is not a certificated dealer, dismantler, manufacturer, or lessor-retailer. The sale is reported to the Department of Motor Vehicles by the dealer and the vehicle is registered in the name of a lessee only. Sales tax is applicable measured by the selling price to the lessor.

"(B) A certificated dealer is also a lessor and registers a vehicle in the name of the lessee only. Use tax is applicable measured by the cost of the vehicle to the dealer-lessor.

"(C) A lessor who is not a certificated dealer, dismantler, manufacturer, or lessor-retailer leases a vehicle and has it registered in the name of the lessee only.

"1. Use tax is applicable if the vehicle was purchased from a bona fide dealer outside this state. The measure of tax is the sales price of the vehicle to the lessor and it is payable by the lessor to the Department of Motor Vehicles.

"2. Use tax is applicable if the vehicle was purchased from a person who is not a certificated California dealer, manufacturer, dismantler, lessor-retailer, or a bona fide out-of-state dealer. The measure of tax is the sales price of the vehicle to the lessor and, in the absence of evidence to the contrary, the sales price will be presumed to be an amount determined as in paragraph 3 of (c)(1) above.

"Lessors who own vehicles registered in the names of lessees only may have the registration changed to show either the lessor or the lessor and lessee relationship

on the registration card. Where this is done they may continue to pay tax measured by the rental receipts. Insofar as the registration is not made pursuant to a retail sale, the change may be made without incurring use tax liability on the transfer of registration. Transfers, however, will be subject to transfer fees imposed by the Department of Motor vehicles.

"Lessors who change the registration should notify dealers from whom they purchase the vehicles and to whom they gave resale certificates that the registrations have been changed."

Under this regulation, if registration is in the lessee's name only, sales tax applies to the sale of the vehicle to the lessor, or use tax, measured by the lessor's purchase price, applies to the lessor's use of the vehicle.

Generally a lessor of tangible personal property may elect either to pay tax up front on the purchase price of the property or to collect and pay tax on rental receipts. Regulation 1660. Vehicle Code section 4453.5(a) provides:

"(a) In the case of leased vehicles, the lessor and the lessee shall be shown on the registration card as the owner and the lessee of a vehicle, and the department shall designate their relationships upon the card and the ownership certificate by the words 'lessor' and 'lessee' and, at the election of the lessor, the department may designate thereon either the address of the lessor or the lessee."

If the parties register in the name of the lessee only, they are representing that there is no lease agreement between them or they are hiding the nature of the transaction from the DMV and the board. Therefore, the board will not allow tax to be measured by rental receipts. Regulation 1610(d), however, allows the lessor to correct an erroneous registration by changing the registration to show the lessor and lessee relationship. If the lessor corrects the registration, the lessee may continue to pay tax measured by rental receipts, and the lessor will not be required to pay tax on purchase price.

We are not certain why you refer to the lessor as a "seller/lessor" in the last sentence in the next to last paragraph of your letter. If an erroneous registration is not corrected, use tax applies to the lessor's use of the vehicle and will be measured by the lessor's purchase price of the vehicle. This is true whether the lessor is a motor vehicle dealer or a lessor-retailer.

Revenue and Taxation Code section 6596 provides the only basis for relief from tax if a taxpayer relies on incorrect written advice from the board. The primary conditions to qualify are that the request for opinion must be in writing and must disclose all relevant facts, including the identity of the taxpayer. Since you have not identified a client and facts from a particular

transaction, this opinion does not come within the provisions of section 6596 but rather is simply general advice regarding a set of hypothetical facts.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cl