



STATE BOARD OF EQUALIZATION

February 28, 1966

H. K. T--- & Co.
Certified Public Accountants
XXX --- ---
--- ---, California XXXXX

Attention: Mr. D--- K. T---

Gentlemen:

This refers to your letter of February 24, 1966, regarding the renting of steel scaffolding.

We understand that your client manufactures and sells steel scaffold, and contemplates renting scaffold it has manufactured.

The rental arrangements will be for terms ranging from one day to two months; in other words, short-term rentals.

Three basic rental arrangements will be offered: (1) straight rental – lessee picks up, assembles, disassembles and returns scaffolding; (2) rental with delivery by the lessor and redelivery by the lessor – lessee will assemble and disassemble; (3) rental where lessor delivers, assembles, disassembles and redelivers.

In any of the above three arrangements, rentals by the lessor, notwithstanding the fact that he is also the manufacturer, will be subject to tax. Liability is on the lessee but the lessor is liable for collecting the tax.

Tax will apply to rentals of the scaffold even if the manufacturer paid tax on the cost of the materials used to manufacture them, since the property rented is rented in substantially different form than the property on which the tax was paid, i.e., the materials.

Charges for delivery of the scaffold will not be subject to tax if the delivery is separately stated and if the delivery and redelivery is optional with the lessee. Your example indicates that delivery may be optional, inasmuch as one rental arrangement provides for the lessee to deliver and redeliver.

The same applies to charges for assembly of the scaffold and the dismantling of it. If assembly and disassembly is optional and charges therefor are separately stated, there will be no tax on the assembly or disassembly. It is our opinion that assembly and disassembly is not fabrication of a scaffold within the meaning of fabrication.

We recommend that your client segregate the charges for assembly, delivery, and rent.

If a wholly owned corporation subsidiary of your client purchases the scaffold from your client and thereupon proceeds to rent the scaffold, tax would apply the same as stated above if the scaffold was purchased ex-tax. If your client paid sales tax on the sale to the wholly owned subsidiary, there would be no tax on the rental receipts when the subsidiary rented the scaffold.

In answer to your question number 8, wherein you ask if the exception under section 6006(g)(4) would apply if the lessor corporation were owed 10% by an outside third party, 65% by your client and 15% by an individual who is related by marriage to another individual who owns 80% of your client corporation, we can only say that the question of tax on rental receipts turns on (1) whether the lessor has acquired the property being rented in a tax paid status; (2) whether the property is being rented in substantially the same form as acquired; and (3) whether the property rented comes within any of the exemptions under section 6006(g)(1), (2), (3) or (4).

The manner in which a corporate entity-lessor is held as far as stock is concerned is not material to the question of tax on receipts from rentals.

Very truly yours,

Robert H. Anderson
Associate Tax Counsel

RHA:dse

cc: --- --- - District Administrator