

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

March 5, 1969

Dear Mr. ---:

Please excuse the extreme delay in responding to your letter of November 4, 1968 concerning the inclusion of personal property taxes in the measure of tax on rental receipts. We have been thoroughly reviewing this subject in response to your letter and those of other lessors.

The same kind of review is also being undertaken in regard to the taxability of sale-and-leaseback transactions, the subject of a letter from you dated October 23, 1968. We have not yet concluded our review of that subject but will write to you as soon as our position is established.

In summary, our position on personal property is this: Where a lessee is required by the rental contract to pay any personal property tax as assessed on the leased property, the amount so paid will be regarded as part of the taxable rental receipts whether the tax is assessed directly against the lessee or the lessor.

In the case of banks, the rule is different because banks are not subject to payment of personal property taxes. Leased property owned by the bank is subject to that tax on the theory the lease is a conditional sale contract and the lessee is the owner. If the property is on the unsecured roll, the taxing authority can gain a personal judgement against the lessee. Accordingly, it is our view that the payment of tax by the lessee is payment of a personal obligation, is not for the benefit of the lessor and is therefore not includible in taxable rental receipts. This is true even though there can be an action against the property if on the secured roll, and the property is subject to seizure and sale if on the unsecured roll. These latter remedies are not generally followed in practice. The fact that the amount for the tax is first paid to the bank and the bank pays it to the tax collector does not alter the rule.

In my reply to you of October 30, 1968, I had overlooked the fact that banks are not subject to personal property taxes. This factor is determinative, and I apologize for my earlier oversight.

Very truly yours,

Lawrence A. Augusta
Assistant Counsel

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