



STATE BOARD OF EQUALIZATION

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January 27, 1989

Mr. R--- W. O---
Tax Administration Manager
T--- M--- C--- Corp.
P.O. Box XXXX
---, CA XXXXX-XXXX

Dear Mr. O---:

This is in response to your letter dated December 8, 1988 regarding the application of use tax to the amount of personal property tax assessed on leased property. You state:

- "1. The California Franchise Tax on income is imposed on banks and financial corporations in lieu of all other state, county and municipal licenses and taxes. The exemption does not apply to real property taxes, sales and use taxes and motor vehicle registration license fees. [Sec. 23183]
- "2. TMCC is a financial corporation for California tax purposes and is therefore exempt from California personal property tax under the provisions of Sec. 23183. However, tangible personal property leased from TMCC is subject to personal property tax since, '...the lessee of tangible personal property owned by a bank or financial corporation shall be conclusively presumed the owner of that property.' [Sec. 235, Part 2. Assessment]

Per discussion with the LA County Assessor's office, with respect to personal property leased from financial corporations, under Sec. 235, the legal incidence of liability rests with the lessee and all enforcement proceedings resulting from any unpaid personal property taxes are against the lessee.

- "3. "TMCC files personal property tax returns reporting leased equipment and pays the tax. Under lease agreement, TMCC is reimbursed by the lessee for property taxes paid.
- "4. 'When a bank is the lessor of personal property and personal property tax is assessed against the property in the hands of the lessee, the amount of the personal property tax is not includable in the taxable rental receipts.' [SBE Sales Tax Counsel Ruling 330.3530, 3/5/69]

Although the 1969 ruling refers to banks only, financial corporations have been exempt from personal property tax only since 1981."

The basis for the opinion in Annotation 330.3530 was that, for purposes of the personal property tax, the lessee is regarded as the owner of the leased property. The lessee therefore had personal liability for the personal property tax, even if collected from the lessee and paid by the bank, and the amount of the personal property tax was not part of the taxable rental receipts.

Since the rules applicable to personal property taxes assessed against property leased by banks is now the same for property leased by financial corporations, the same analysis as set forth in Annotation 330.3530 would also apply. Therefore, personal property taxes assessed against property leased by financial corporations are the responsibility of the lessees and are not part of the taxable rentals payable.

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

Sincerely,

David H. Levine
Tax Counsel

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bc: --- – District Administrator