



**STATE BOARD OF EQUALIZATION**

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February 17, 1993

BURTON W. OLIVER  
*Executive Director*

Mr. P--- H. L---  
The M--- B---  
XXX --- --- Drive  
---, CA XXXXX

Re: SS -- XX-XXXXXX

Dear Mr. L---:

This is in response to your letter dated November 11, 1992 which was addressed to Gerald Jung, a tax auditor with the State Board of Equalization.

According to your letter, on March 17, 1990, M--- B--- leased a vehicle to B--- L--- and M--- N---. M--- B--- collected from the lessees \$24.48 in use tax on each of the monthly rentals. M--- B--- stopped collecting use tax on the monthly rentals after the lessees moved to Illinois in August, 1990. (We assume the lessees removed the car from California at that time.) Sometime in March of 1991, M--- B--- filed a motor vehicle use tax return with the State of Illinois and paid \$1,224 in tax. Subsequently, on October 15, 1992, the lessees moved back to California, and M--- B--- reinstated the tax portion of their monthly payment and began collecting California use tax. You inquire whether the lessees are entitled to a credit for the tax they paid to the State of Illinois.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Revenue and Taxation Code section 6201 imposes an excise tax, commonly referred to as the use tax, on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. The use tax complements the sales tax and is most frequently imposed upon in-state leases and out-of-state purchases of property for use in California.

Unless tangible personal property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax measured by the purchase price of the property, a lease of tangible personal property is a continuing sale and purchase, and

the lessor must collect and pay use tax measured by the rental payments. Rev. & Tax. Code §§ 6006(g), 6010(e), 6006.1, and 6010.1. Although the use tax is imposed on the lessee, the lessor must collect the tax from the lessee at the time rentals are paid by the lessee and give the lessee a receipt. Sales and Use Tax Regulation 1660(c)(1). The rentals, however, are subject to tax only while the leased property is located in California. Rev. & Tax. Code § 6006.1 and 6010.1.

Revenue and Taxation Code section 6406 allows a credit against California use tax for certain sales and use taxes or tax reimbursement therefor imposed by other states. With respect to leases, to be entitled to the credit the lessor must make a timely election to measure any tax liability for the property by its purchase price. Regulation 1660(c)(8). A lessor who acquires leased property without paying use tax or sales tax reimbursement may elect to pay tax measured by the property's purchase price but must make that election by reporting and paying timely such tax with its return for the period during which the property is first placed in rental service. Regulation 1660(c)(2).

With respect to the present lease, M--- B--- did not elect to pay tax measured by the property's purchase price when the property was initially placed in rental service in March of 1990. Therefor, M--- B--- may not treat this lease as a tax-paid lease and may not take a credit for the tax imposed by the State of Illinois.

A second reason why no credit is allowed is that Revenue and Taxation Code section 6406 provides that the retail sales or use tax or reimbursement therefore imposed by any other state must be paid "prior to the storage, use, or other consumption of that property in this state." Regulation 1660(c)(8) also requires that the tax or reimbursement therefor imposed by any other state must be paid prior to leasing the property in this state.

In the present matter, the property was leased in California prior to payment of the Illinois motor vehicle use tax. Therefor, no credit is allowed under Revenue and Taxation Code section 6406.

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

Sincerely,

Elizabeth Abreu  
Tax Counsel