STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

February 21, 1992

Mr. C--- L. N---
Attorney and Counselor at Law
XXXX --- --- East, Eleventh Floor
--- ---, California XXXXX

Re: Amendment of Regulation 1660

Dear Mr. N---:

This is in response to your letter dated January 15, 1992 regarding the application of Revenue and Taxation Code section 6010.65.

You note that the section is in effect until January 1, 1995. If a taxpayer enters into a sale and leaseback transaction prior to that date but the lease itself extends past January 1, 1995, you ask whether the lease payments made after January 1, 1995 would be taxable. You also inquire as to the tax treatment of a repurchase of the equipment after January 1, 1995 if the repurchase were pursuant to an option granted in the contract signed prior to January 1, 1995.

Subdivision (c) states that section 6010.65 applies to acquisition sale and leaseback arrangements executed before January 1, 1995. Thus, if the acquisition sale and leaseback arrangement is executed prior to January 1, 1995, the leaseback portion comes within the terms of section 6010.65 and is not regarded as a continuing sale subject to use tax. With respect to repurchases, the date of the repurchase is irrelevant, regardless of when the option is granted. Subdivision (b) of section 6010.65 specifically states that "sale" and "purchase" include, for purposes of application of sales and use tax, the transfer of title to a lessee upon termination of an acquisition sale and leaseback. That is, there is no exemption or exclusion under section 6010.65 with respect to a sale at the end of the lease term.

You ask what happens if the lessee sells its business and the lease is assigned to the new buyer along with the option to acquire the property at termination of the initial lease contract. Assuming the lease is pursuant to a qualifying sale and leaseback, the lease is not regarded as a sale for purposes of sales and use tax. You ask whether the rentals to the assignee are exempt. I assume you are asking whether the rentals paid to the lessor are not taxable since the assignee is not the lessee (that is, the assignee in your question is the lessee and is not receiving rents but rather is paying them). As noted above, if the acquisition sale and leaseback qualifies under section 6010.65,

the lease receipts are not taxable rentals. You ask whether the exercise of a purchase option on the equipment by the assignee would be subject to tax. As noted above, the exercise of the option to purchase is not exempt or excluded from taxation under section 6010.65 no matter who exercises the option.

Your final questions relate to use of the property upon termination of the lease when the lessee does not exercise an option to purchase. You ask whether subsequent use of the rental property by the lessor is subject to tax. Since the lessor acquired the property in a transaction not subject to tax, its use of the property is not subject to tax, regardless of whether that use occurs before or after January 1, 1965. On the other hand, when the lessor leases that property to a different lessee, that lease is a continuing sale and purchase and is subject to use tax measured by rentals payable. I note further that there is no election for the lessor to pay tax measured by purchase price since there is no specific statutory authority to do so. (See, e.g., Rev. & Tax. Code § 6094.1 (specific authority to pay tax measured by purchase price when lessor acquires property in an exempt occasional sale).)

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

Sincerely,

David H. Levine
Senior Tax Counsel

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bc: --- --- District Administrator