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**STATE BOARD OF EQUALIZATION**

December 16, 1969  
Amended 9/16/87

A--- T--- S---, Inc.  
--- ---, NY XXXXX

Attention: Mr. F--- W. C---  
Assistant Secretary

Dear Mr. C---:

This is in regard to your letter of November 25, 1969, regarding the taxability of your lease payments to C--- L--- Corporation (C---).

It is our understanding that the sole business activity of your company (A.T.S.) is stevedoring and warehousing services under contract for the United States Navy at various military bases throughout the continental United States. This operation is basically the ground handling of military cargo under the Navy's "Quicktrans" program. This ground handling consists of loading and unloading Navy cargo which will be flown to various military bases throughout the continental United States. O--- N--- A--- does the actual airlifting of the cargo. A.T.S. is a wholly owned subsidiary of O--- N--- A---.

To perform its ground handling contract with the United States Navy, A.T.S. leases various types of stevedoring equipment such as loaders, transporters, forklifts, scales, and dollies from C---. (We assume C--- is leasing the items in substantially the same form as they were acquired.)

You request our opinion as to the taxability of the rental payments paid to C--- for the above-described property located in California.

Generally speaking, a lease of tangible personal property in substantially the same form is subject to tax measured by either rental receipts or cost as provided in ruling 70(c)(2)(F), copy enclosed. If the lessor does not timely elect to pay tax on the cost of the leased item, tax is due on rental receipts. There is no exemption from such tax merely because the leased article is used by the lessee in performing a government contract.

It should be noted that effective November 8, 1969, section 6006(g)(4) was added to the Revenue and Taxation Code. It provides that a "sale" does not include a lease of:

“Mobile transportation equipment for use in for-hire transportation of property in interstate or foreign commerce, such as railroad locomotives, trucks, truck tractors, truck trailers, dollies, bogies, chassis, and cargo shipping containers.”

In essence, the result of this amendment was to make the lease of certain property used by the lessee in the described manner a nonsale thereby making the lessor the user of the property in question. Under certain circumstances, this use will result in tax being due on the cost of the property. In such a case, there is no election to pay tax measured by rental receipts.

However, it is our opinion that this section does not apply to the lease of items such as yours, i.e., loaders, transporters, forklifts, and dollies. It is to be noted that the generality of the term “mobile transportation equipment” is to be limited, under the rule of ejusdem generis, by the more specific examples included in the statute. The examples included in the statute are equipment, the essential use of which is to transport property for substantial distances, and not merely to load and unload it. The essential use of the items you lease, on the other hand, is to load and unload property and the element of transportation is only incidental to that use.

Summarily, if C--- purchased the items ex tax and has not made a timely election to pay tax on their cost, it is our opinion tax is due measured by your rental receipts attributable to the property located in California. If, on the other hand, C--- has properly paid California tax measured by his cost of the items, the rental receipts will not be subject to tax.

For your general information, I am enclosing copies of Regulation 1684, 1686, and 1685.

Very truly yours,

Glenn L. Rigby  
Tax Counsel

GLR:lt  
Enclosures (3)

9/16/87

This annotation dealing with mobile transportation equipment more properly belongs under the subject heading “Leases of Mobile Transportation Equipment”, and shall be moved to that subject heading, where it will appear as Annotation 335.0046 – Loading and Unloading Equipment.

DJH:rar