STATE OF CALIFORNIA **335.0079**

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October 3, 1995

Mr. D--- B. F---
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XXX --- ---, Suite XXXX
---, CA XXXXX

Dear Mr. F---:

This is in response to your letter of May 18, 1995, in response to our May 10, 1995, letter. You request additional clarification of the advice provided to you in response to your second question in your original letter. Your second question was:

> "If any trailer does not qualify for the interstate commerce exemption and also fails the principal use test, what are the sales and use tax consequences with respect to our client and to the prime lessor?"

You state:

> "Our client, as stated, is the lessee/sublessor of truck trailers leased from an out-of-state lessor. It is intended that all of the trailers will qualify for the exemption from use tax for property used in interstate commerce. In the event, however, that one or more of the trailers may not qualify for the exemption based upon the activities of the sublessees, you responded, '(s)ince the trailer is purchased for use in California and the use does not qualify for the interstate exemption, the lessor's use of the MTE in this state (i.e., the lease by the lessor for use by the lessee in this state) is subject to use tax.'
>
> "We have advised our client that your response means that the prime lessor would be responsible for any use tax obligation that may arise from any non-exempt use of the MTE in this state by the sublessees. Our client would like reassurance that it, as the lessee/sublessor, would not be held liable for sales or use tax obligations that may arise from the transactions as described above."

As noted in our previous letter, a lease of mobile transportation equipment (MTE) is not a sale or a purchase. (Rev. and Tax. Code §§ 6006(g)(4), 6010(e)(4).) In this regard, Sales and Use Tax regulation 1661, Leases of Mobile Transportation Equipment, provides at subdivision (b)(1):

> "With respect to leases of mobile transportation equipment, the sale to the lessor is the retail sale and the lessor is the consumer of the equipment. Accordingly, either the sale of the equipment to the lessor or its use in this state may be subject to tax. For example, if the sale and delivery occur within California, the transaction is subject to sales tax unless the lessor makes a timely election to report his or her tax liability measured by the fair rental value as provided in (b)(2) below. On the other hand, if the sale and delivery occur outside California and the property is purchased for use in California, use tax will apply measured by the purchase price unless the equipment enters the state in interstate commerce and is used continuously thereafter in interstate commerce, or the lessor makes a timely election to report use tax liability measured by the fair rental value as provided in (b)(2) below."

Since the lessor is the consumer of the MTE, any use of the MTE by the lessee or sublease is attributable to the lessor. Hence, any tax owed on the use of the MTE is owed by the lessor. Therefore, if there was a use tax obligation which arose from a non-exempt use of the MTE in this state by the subleases, the prime lessor would be liable for that use tax.

I hope that this additional clarification and assurance satisfies the needs of your client. If you have any further questions in regard to this matter, please do not hesitate to write.

Sincerely,

Anthony I. Picciano
Staff Counsel

AIP:cl

cc: Sacramento District Administrator