

**STATE BOARD OF EQUALIZATION**

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April 19, 1985

Mr. J--- H. K---
F---, G--- & F---
XXX --- Blvd., Suite XXXX
--- ---, CA XXXXX

Dear Mr. K---:

Your letter to Assistant Chief Counsel Gary Jugum of January 23, 1985, was assigned to me for reply. You ask about the application of California sales and use tax to a hypothetical transaction in which mobile transportation equipment is purchased, leased, and then subleased to be used in interstate or foreign commerce. The proposed transaction is as follows:

1. A California bank purchases a trailer chassis from a California manufacturer. The bank is acquiring title for purposes of security.
2. The bank will immediately lease the chassis to a corporation which will sublease it to an affiliate.
3. The leases are of mobile transportation equipment within the scope of Revenue and Taxation Code sections (hereinafter all references to sections are to that code) 6006(g)(4) and 6010(e)(4).
4. The chassis will have an unladen weight of 6,000 pounds or more, will be registered out of state, and "will be used exclusively outside California or exclusively in interstate or foreign commerce or both and will be moved, loaded with cargo, from California to a point outside the state within 75 days after delivery by the manufacturer." The bank will provide affidavits pursuant to section 6388.5 to the manufacturer.
5. In addition, we will assume that the delivery of the chassis will take place in California.

The following sets out your three questions and our answers to them:

1. Since the bank is making the purchase solely for security, will the exemption available under Revenue and Taxation Code section 6388.5 apply to the purchase and immediate lease of the chassis by the bank?

California sales and use tax law imposes tax on the sale or use of tangible personal property in this state, unless such sale or use is otherwise exempt from taxation. Section 6023 defines "mobile transportation equipment" as:

"...equipment such as railroad cars and locomotive, buses, trucks (except 'one-way rental trucks'), truck tractors, truck trailers, dollies, bogies, chassis, reuseable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment."

Section 6006 states that a sale means and includes:

"(g) Any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except a lease of: (4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023."

Section 6010 mirrors that definition by defining a "purchase as:

"(e) Any lease of tangible personal property in any manner or by any means whatsoever, for consideration, except a lease of:...(4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023."

Since the lease of mobile transportation equipment (MTE) is not a sale, Regulation 1661(f) states:

"With respect to leases which fall within the scope of Sections 6006(g)(4) and 6010(e)(4) ... 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."

Thus, tax, if applicable, would apply to the sale by the manufacturer of the chassis to the bank.

However, Section 6388.5 provides:

"... whenever a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more which has been manufactured or remanufactured

in this state is purchased for use without this state and is delivered by the manufacturer, remanufacturer, or dealer to the purchaser within this state, and the purchaser drives or moves the vehicle to any point outside this state within 75 days from and after the date of delivery, there are exempted from the taxes imposed ... the gross receipts from the sale of and the storage, use or other consumption of the vehicle within the state, if the purchaser furnishes the following to the manufacturer, remanufacturer, or dealer:

- (a) Written evidence of an out-of-state license and registration for the vehicle.
- (b) The purchaser's affidavit attesting that he or she purchased the vehicle from a dealer at a specified location for use exclusively outside this state, or exclusively in interstate or foreign commerce, or both.
- (c) The purchaser's affidavit that the vehicle has been moved or driven to a point outside this state within the appropriate period of ... 75 days of the date of the delivery of the vehicle to him or her."

You state that the chassis are being purchased to be used in interstate or foreign commerce, or both, and that the bank is prepared to comply with sections 6388.5, subsections (a), (b) and (c). We have held in the past that section 6388.5 applies even though the sale is to a lessor and the MTE is delivered to and is thereafter used by the lessee.

We believe the same result follows with use by the sublessee. Since it is the intention of the lessor to immediately sublease the chassis to an affiliate, the use in interstate or foreign commerce, or both, by the sublessee would be imputed to the lessee/sublessor which would in turn be imputed to the bank and the exemption of 6388.5 would apply to the sale by the manufacturer.

2. Assuming an affirmative answer to number 1, will the exemption of 6388.5 be applicable if the chassis carry a load on their initial movement out of California?

We have also held in the past that the chassis may carry a payload out of the state without loss of the exemption provided it is a payload in interstate or foreign commerce, or both.

3. Can the chassis if purchased within the exemption of 6388.5 and used exclusively in interstate or foreign commerce be assigned to a California depot?

The chassis may return to California and may be assigned to a California depot, without loss of exemption, provided, however, that the use of the chassis is exclusively the carriage of interstate or foreign commerce goods, or both. After leaving the state, the chassis may return to California, and even remain in California, as long as they are exclusively carrying interstate and foreign commerce goods, or both. However, if so much as one carton is for intrastate commerce, the exemption will be lost.

Mr. J--- H. K---

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April 19, 1985
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If you have any further questions, please feel free to contact us.

Very truly yours,

Vickie B. Owen
Tax Counsel

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