

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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July 30, 1990

Mr. M--- M. B---
Attorney at Law
XXXX --- Street, Suite XXX
---, CA XXXXX

Re: H--- M--- Company
SR -- XX-XXXXXX

Dear Mr. B---:

This is in reply to your June 5, 1990 letter regarding the application of use tax to leases of mobile transportation equipment by H--- M--- Company, a retailer engaged in the rental of trucks. You noted the following facts:

“H--- M--- Company is engaged in the lease of ‘mobile transportation equipment’ as defined under Revenue and Taxation Code Section 6023. As a lessor of mobile transportation equipment, H--- may elect to pay their use tax liability measured by either the fair rental value or the purchase price of the mobile transportation equipment. Up until the present time, H--- has elected to pay the tax upon purchase of the vehicles and, therefore, no sales tax is charged by H--- to its rental customers.

“H--- has decided to change its election with respect to vehicles purchased in the future. Instead, H--- will use its resale permit to purchase the vehicles on a non-taxable basis and subsequently charge sales tax to its customers as the trucks are rented based upon the fair rental value.

“To simplify accounting procedures and to treat customers with consistency, H--- plans to charge sales tax on all vehicle rentals whether or not it has previously paid sales tax upon the purchase of a specific vehicle. All sales tax collected including the excess sales tax reimbursement will be remitted to the state so that H--- will not be unjustly enriched or benefitted by the transaction.”

Sections 6006, subdivision (g)(4), and 6010, subdivision (e)(4), of the Revenue and Taxation Code respectively exclude from “sale” and “purchase” a lease of mobile transportation

equipment for use in transportation of persons or property. The tax consequences of the exclusion are that the lease is a use of the property by the lessor. (Rev. & Tax. Code § 6009.) The sale to the lessor is a retail sale. (Rev. & Tax. Code § 6007.)

Under Section 6092.1, a person who leases mobile transportation equipment and who cannot otherwise properly issue a resale certificate may issue such a certificate for the limited purpose of reporting the use tax liability based on fair rental value as provided in subdivision (d) of section 6094 and subdivision (d) of section 6244. The use tax liability on the lease of mobile transportation equipment purchased under a resale certificate is payable by the lessor rather than the lessee. Since H--- made an election to pay its use tax measured by fair rental value by collecting further tax from the lessees, H--- must abide by the tax consequences of its choice. (Freeman v. C.I.R., 303 F.2d 580.)

As the agency charged with the administration of the sales and use tax, this Board has a vital interest in upholding the integrity of those taxes. (Decorative Carpets, Inc. v. State Board of Equalization, 5 Cal.2d 252.) The Board cannot condone a practice whereby taxes are improperly collected even though the taxes are paid to the Board. Therefore, we ask that you urge H--- not to collect reimbursement for use tax from its customers when, in fact, no tax is due.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr