



STATE BOARD OF EQUALIZATION

March 29, 1971

Mr. S--- M---
XXX --- Street
--- ---, CA XXXXX

SR -- XX XXXXXX
J--- W. O---
dba J--- W. O---
Company

Dear Mr. M---:

Reference is made to the January 20, 1971 preliminary hearing regarding the April 16, 1970 petition for redetermination which you filed on behalf of your client, J--- W. O---, with respect to tax assessed as a result of an audit for the period April 1, 1966 to June 30, 1969. At the hearing you questioned the inclusion of the amount of \$6,800 in the taxable measure, Item E of the audit report. That amount consists of rental receipts received from a vehicle leased and used in California. While you did not dispute the taxability of the rental receipts, you suggested that credit pursuant to Sales and Use Tax Law section 6406 might be available to your client because it paid tax to the state of --- in contemplation of the lessee's use of the vehicle there.

The --- Motor Vehicle Sales and Use Tax Law contains no provision which relates to the taxability of leased vehicles. The --- Limited Sales, Excise and Use Tax Law doe contain provisions regarding leased property and an explanation thereof is set forth in ruling No. 95 0.11, Rentals and Leases of Personalty. That ruling provides, in part, that leases of property for use outside --- are not subject to sales tax or use tax, and that tax will apply only to rental charges falling due while the leased property is in the possession of the lessee in ---. Thus, under the former law, there was no provision which required payment of tax to the State of ---, and under the latter law, assuming it to be applicable, tax was to be paid to the State of --- only while the vehicle was in the possession of the lessee in ---.

Under the circumstances, it appears that your client would be entitled to a tax credit or refund from --- since the vehicle was seldom, if ever, used there. When a taxpayer is entitled to a tax credit or refund from another state, his obligation for payment of tax to that state ceases to exist, and in such cases, it has been our opinion that the credit allowed under 6406 for payment of tax in that state is not available, whether or not the taxpayer claims the credit or refund from that state. (Cal. Tax. Serv. Ann. No. 1318.50). Thus, we cannot recommend adjustment of this item.

It will be our recommendation to the board that the tax be redetermined without adjustment. If we do not hear from you within 30 days from the date of this letter, we shall assume that you concur in our recommendation, and we shall present the matter to the board for final action. In this event, you will receive official notice of the board's action in due course. In the event that you do not concur in our recommendation and desire a hearing before the board, please notify Mr. J. L. Martin, P.O. Box 1799, Sacramento, CA 95808, of this fact within the 30-day period and he will inform you of the time and place of hearing.

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM:smb