

M e m o r a n d u m

570.1670

To: Headquarters – Evaluation and Planning Unit (RN)

Date: January 21, 1969

From: Tax Counsel (TPP:GJJ) - Headquarters

Subject: _____

This is in reply to your memorandum of December 24, 1968, in which you ask:

If equipment is purchased tax-paid in another state and transferred to California for rental, under what circumstances can the lessor elect to pay tax on cost and take a credit for tax paid to another state?

You suggest that "...our 90-day rule should be applicable to this situation. That is, if the property is leased outside the state for less than 90 days, the lessor has a use tax liability and may report on cost and receive credit for the tax paid to another state. On the other hand, if it is leased for over 90 days outside the state, the lessor would not have a use tax liability and therefore must report on rental receipts."

We think that the 90-day rule can be applied to the less-than-90-day situation in the manner that you suggest. However, we have some difficulty with the more-than-90-day aspect of the rule. The board cannot take the position that if property is used for over 90 days outside this state prior to its being brought into this state, then the use of that property in this state is not subject to use tax. The law provides that tax is due on the use in this state of property purchased from a retailer "for...use in this state." Under an appropriate set of facts, a taxpayer could prove that property brought into this state more than 90 days from its purchase was purchased "for...use...in this state." Taxpayer would then be entitled to the credit provided for in section 6406. Thus at best we can only take the position that property brought into this state more than 90 days from its purchase is presumed not to have been purchased for use in this state.

Accordingly, and keeping in mind the analysis made above, we suggest that you tell taxpayer something along the following lines:

The credit allowed by California law applies only against the use tax liability of one who has himself paid tax levied against, and paid by, the lessee and only collected for remittance to this state by the lessor. You will be subject to use tax liability (and thus entitled to the credit provided for by California law) only if the property transferred by you to California was purchased for use in this state. When property is transferred to this state within 90 days of its purchase, we consider that property to be purchased for use in this state. In such cases you may elect, prior to the time the

property is first placed in rental service, to pay use tax based on the purchase price of the property, and you will receive a credit against that tax to the extent that you paid tax on the property in another state. If, instead of electing to pay use tax, you choose to pay tax “measured by the rental receipts” you will not be entitled to the credit because, as explained above, you will not be paying a use tax.

GJJ/vs