State of California **Board of Equalization**
Legal Division - MIC:82

Memorandum

To: Mr. Clay Cowan
Local Revenue Allocation Section (MIC:27)

Date: February 9, 1996

From: John L. Waid
Senior Staff Counsel

Subject: [No Permit Number]
SB 602- Out-of-State Lease

I am answering your memorandum to me dated December 26, 1995. You attached to your memorandum a copy of a letter dated December 5, 1995, that you received from Mr. REDACTED TEXT, describing one of REDACTED TEXT's lease transactions and stating his conclusion that the local use tax proceeds should be reported to the countywide pool on Schedule B. You indicate your opinion that the transaction Mr. REDACTED TEXT describes should be allocated to the participating jurisdiction of the dealer involved.

According to Mr. REDACTED TEXT's letter, it has a customer which has created a master lease agreement with REDACTED TEXT, which agreement is negotiated, accepted, and executed by REDACTED TEXT at its Minnesota headquarters. The customer leases several vehicles for use by its employees in several different states. One of those employees resides in California. The car leased for the benefit of the employee was identified to the master lease prior to being manufactured. Once it was manufactured, it was delivered to a dealer in California where the employee picked it up. The customer then began making lease payments to REDACTED TEXT at its headquarters in Minnesota where the certificates of title for all the cars leased under this agreement are kept.

OPINION

SB 602 added Section 7201.5 to the Bradley-Burns Uniform Local Sales and Use Tax Law. It altered the application of the local use tax ordinances in the matter of automobile leases from the place of residence of the lessee to the location of the dealer which leased, either directly, or ultimately, the car to the lessee. The statute provides, in part, as follows:

> "7205.1 (a) Notwithstanding any other provision of law, in connection with any use tax imposed pursuant to this part with respect to the lease (as described in Sections 371 and 372 of the Vehicle Code) of a new or used motor vehicle (as

> defined in Section 415 of the Vehicle Code), the place of use for the reporting and transmittal of the use tax shall be determined as follows:
>
> "(1) If the lessor is a new motor vehicle dealer (as defined in Section 426 of the Vehicle Code), the place of use of the leased vehicle shall be deemed to be the city in which the place of business (as defined in Section 7205 and the regulations promulgated thereunder). If a lessor, who is not a person described in this paragraph, purchases the vehicle from a dealer (as defined in Section 285 of the Vehicle Code), the place of use of the leased vehicle shall be deemed to be the city in which the place of business (as defined in Section 7205 and the regulations promulgated thereunder) of the dealer from whom the lessor purchases the vehicle is located.
>
> "(2) If the lessor is not a person described in paragraph (1) and purchases the vehicle leased from a source other than as described in paragraph (1), the use tax shall be reported to and distributed through the countywide pool of the county in which the lessee resides."

We disagree with your conclusion. This appears to be precisely the kind of situation at which subdivision (a)(2) is aimed. REDACTED TEXT is not a California new car dealer, and the car was purchased directly from COMPANY A at an out-of-state factory. The purchaser took title to it there, and the lease was negotiated and is administered there. The California dealer does not acquire title at all, and the car was never a part of its resale inventory. Here, the transaction is completed out of state. The dealer apparently receives no financial remuneration and at most provides a temporary parking lot for the car coming into California. No party that is obligated under the lease contract is ever in California.

Also, SB 602 was enacted specifically to alter the application of local use tax ordinances so that the local tax consequences of leasing an automobile for a long term would be the same as if the car were bought outright. The lease here does not substitute for a sale in this state. Were it a sale at the inception, the sale would have taken place out of state, so there still would be no local sales tax consequences. There are only use tax consequences because the car is leased for use in this state. (§ 6241.) This transaction also cannot be analyzed according to the principles underlying the second paragraph of Section 6007 because REDACTED TEXT is engaged in business in this state. (§ 6203(c).) Therefore, we conclude that REDACTED TEXT is correct in its analysis. SB 602 does not operate to alter the place of use from the location of the lessee's employee's residence to that of the place of business of the dealer which delivered the car. As a result, REDACTED TEXT should continue to report local use tax to the countywide pool of the lessee's employee's residence on Schedule B.

JLW:sr
REDACTED TEXT

cc: Mr. Robert Wils (MIC:39)