STATE OF CALIFORNIA 330.1940

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

July 7, 1979

Dear Mr. ---:

This is in response to your letter of June 20, 1969 asking the correct application of tax to your client's wild animal show business.

Sales tax is paid on all animals purchased from California sellers, but most of the animals are purchased outside the state, and no tax has been paid on the use of these animals in California. Other of the animals are born on your client's premises, the offspring, I assume, of animals owned by your client.

As you know, subject to certain conditions respecting passage of time, property purchased outside California for use in this state is subject to use tax. Property purchased for leasing may be purchased ex-tax and tax reported and paid on rental receipts, or tax may be paid at the time the property is acquired or with the return for the period in which it is first placed in rental service, and tax will not be due on rental receipts. Where property has been leased and tax has been paid measured by rental receipts, use tax will be due on the full purchase price with a credit for taxes paid on rental receipts if the lessor makes any use of the property other than leasing.

The application of tax is difficult and complex when these rules test rental property, some of which has been purchased tax paid, some ex-tax, and which is used partly in transactions which are not leases and partly in transactions which are leases.

On the animal rides given at fairs, shopping centers, etc., where the handler leads the animal, there is no lease as the customer lacks direction and control. Consequently, if the animals used in such an activity were purchased outside of California from a retailer, use tax would be due on the purchase price with a credit for any tax that might have been paid on previous rentals.

Sincerely,

Lawrence A. Augusta
Tax Counsel

STATE OF CALIFORNIA

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1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-2242

January 14, 1986

Dear Ms. ---:

I am responding to your letter of November 18, 1985 wherein you requested a legal opinion as to the potential sales tax liability of leasing animals accompanied by the animal's trainer/owner.

The information you provided states that your clients are in the business of leasing animals to parties for performance and/or exhibition. The owner/trainer always accompanies the animal and never relinquishes custody or control. The customer is billed separately for the time of the animal, the time of the trainer, and for transportation.

Section 6006(g) of the Revenue and Taxation Code outlined "sale" to include "any lease of tangible personal property in any manner or by any means whatsoever, for a consideration…." A lease is deemed to be a continuing sale pursuant to Section 6006.1 of the Revenue and Taxation Code. Tax is based upon the rental price unless otherwise exempted. (Rev. & Tax. Code § 6012(a).) Section 6012(b)(1) states further that the lease or rental price shall include any services that are a part of the sale.

The principal question at hand is whether or not the furnishing of animals for entertainment constitutes a nontaxable service or a taxable lease. The term "lease" is outlined by Regulation 1660(a) as follows:

> "The term 'lease' includes rental, hire, and license. It includes a contract under which a person secures for a consideration the temporary use of tangible personal property which although not on his premises is operated by or under the direction and control of the person or his employee…."

Section 6006.1 defines a "continuing sale" as "the granting of possession of tangible personal property by a lessor to a lessee…."

As set forth in the determinations above, one of the critical elements of a "lease" is that the tangible personal property be placed under the direction and control of the lessee. From the facts that you have provided, this critical element appears to be missing in that your clients never

give up possession of the animals to their customers. The owner/trainer retains complete control over the animal at all times. Without the requisite possession or control (see Entremont v. Whitsell (1939) 13 Cal.2d 290) the customer has not leased the animal but rather has engaged the services of the trainer and the animal.

Based upon the facts that you have provided, your clients would not be subject to sales or use tax liability.

If you are in need of any further assistance, feel free to contact us again.

Sincerely,

Teresa Armstrong
Legal Counsel

TA:ba

bc: Van Nuys District Administrator
Mr. Les Sorensen