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October 14, 1993

BURTON W. OLIVER
Executive Director

Mr. M--- G. B---
M--- C--- Corporation
XXX --- X, Suite XXX
---, CT XXXXX-XXXX

Re: M--- C--- Corporation
SS -- XX-XXXXXX

Dear Mr. B---:

This is in response to your letter dated June 16, 1993 in which you state:

"We request a determination of the proper sales tax treatment relating to the exemption of sales tax on a leased vehicle where the lease originated in the State of Texas. The sales tax is paid on the purchase price of the vehicle by the lessor to Texas and per the terms of the contract is reimbursed by the lessee.

FACTS:

"The company is in the business of leasing motor vehicles throughout the United States. A vehicle is leased in a state where the sales taxes are paid upfront. Lessee requested that the company change the title and registration to California ninety days into the lease (reflecting a move to his California residence). The company has been billing sales tax on the monthly payments as stated in Donald J. Hennessy's letter dated August 15, 1990. A copy is enclosed.

"The lessee claims exemption from the sales taxes for the following reasons:

- "1) Sales taxes were paid upfront to the State of Texas, and he moved within 90 days of lease signing.

"2) Under Regulation 1620(b)(3) which establishes the 90-day period wherein tax would have to be paid.

"I believe that the lessee is confusing a purchase of a vehicle with the leasing of a vehicle.

"We wish to ascertain whether or not California sales taxes would be due and payable on each monthly transaction under the above set of facts."

Revenue and Taxation Code section 6201 imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. Since leases of tangible personal property are generally subject to use tax rather than sales tax, we will assume for purposes of this discussion that the appropriate tax is use tax.

Unless the tax-paid lease exception applies, the possession of tangible personal property by a lessee is a continuing purchase for use in this state by the lessee as respects any period of time the leased property is situated in this state, irrespective of the time or delivery of the property to the lessee. It is immaterial how long the lessee has leased the property in another state prior to bringing the property to California. While he or she leases the property in California, the lease is subject to use tax. Rev. & Tax. Code § 6010.1. Although the use tax is imposed upon the lessee, the lessor must collect the tax from the lessee at the time rentals are paid by the lessee. Sales and Use Tax Regulation 1660(c)(1).

A lessor may elect to pay tax on the purchase price of the property rather than on rental receipts. This is the tax-paid lease exception. It applies to a lease of tangible personal property which is leased in substantially the same form as acquired and for which the lessor has paid sales tax reimbursement or use tax measured by the purchase price of the property. Rev. & Tax. Code §§ 6006(g)(5) and 6010(e)(5).

Regulation 1660(c)(8) extends this exception to certain transactions where the lessor has paid sales or use tax or sales tax reimbursement to another state prior to leasing the property in that state. For the exception under this regulation to apply, the lessor must be subject to California use tax, measured by the purchase price, on the leased property when it enters this state. To be subject to use tax, the lessor must have purchased the property for use in this state.

If the lessor purchases a vehicle outside of California and the vehicle is brought into California within 90 days after its purchase, under Revenue and Taxation Code section 6248 and Regulation 1610(e)(1) there is a presumption that the property was purchased for use in California. In that case, the lessor may receive a credit for out-of-state retail sales or use tax or reimbursement therefor if he or she makes a timely election to measure any tax liability for the property by its purchase price. Regulation 1660(c)(8). The election must be made on a timely

filed sales and use tax return for the quarter during which the property was brought to California if the out-of-state tax is less than the tax imposed in California. If the out-of-state tax exceeds or equals California's tax, the lessor will be deemed to have made a timely election, and the rental receipts will not be subject to tax. Regulation 1660(c)(8).

Regulation 1660(c)(8) further provides that if a timely election is not made, no credit will be allowed because the tax due will be a use tax measured by rental receipts and will be imposed directly against the lessee, a person other than the one who paid the out-of-state tax or tax reimbursement.

Texas imposes a motor vehicle retail sales tax on every sale of a motor vehicle in that state. The tax, which currently is six and one-quarter percent of the total consideration, is an obligation of and must be paid by the purchaser. Texas Tax Code § 152.021. Motor vehicles which are purchased by a lessor to be leased are subject to motor vehicle sales or use tax based upon the purchase price of the motor vehicle to the lessor. Such tax is due from the lessor at the time of purchase. 34 T.A.C. § 3.79. Motor vehicles are purchased for lease if the agreements granting possession are for more than 180 days. Texas Tax Code § 152.001(5). (The Texas motor vehicle use tax is imposed on rental payments for motor vehicles purchased for rent, i.e., for agreements granting possession for 180 days or less.)

In the transaction you describe, if the vehicle entered California more than 90 days after the company purchased it, the vehicle was not purchased for use in California, and therefore the election to pay tax on purchase price is not available. In that case the rental payments are subject to tax.

If the vehicle entered California within 90 days of purchase and was used in a county in which the total tax rate (including local and district taxes) exceeded the Texas tax rate in effect at the time the company purchased the vehicle, the rental payments are subject to tax unless the company made a timely election to measure the tax liability by the vehicle's purchase price. This election would have to have been made by reporting the purchase price and taking a credit for the Texas tax on the return for the quarter in which the vehicle entered California.

If the vehicle entered California within 90 days of purchase and was used in a county in which the total tax rate equaled the Texas tax rate in effect at the time of purchase, the election is regarded as automatic, and no tax is due on the rental payments^{1/}.

^{1/} Currently the lowest rate in California is 7 1/4%. We believe that prior to October 1, 1993, the tax rate in Texas was 6%. Unless the lessee brought the vehicle to California within 90 days of purchase during the time when the lowest tax rate in California was 6% and used the vehicle in a county which had no district taxes, there would be no automatic election.

Mr. M--- G. B---

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October 14, 1993
330.2095

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

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