



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:85)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-2642

MEMBER
First District

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

December 7, 1993

BURTON W. OLIVER
Executive Director

Mr. J--- A. D---
Consultant in Nonprofit Management
XXXX --- Drive
---, CA XXXXX

Re: Application of Tax
Regulation 166O(c)(8), (6406)
Tax Credit for Vehicles
Leased Out of State and
Brought into California

No Permit No.

Dear Mr. D---:

This is in response to your letter dated June 18, 1993, to Mr. Jeff Joy of the Audit Review and Refunds Section, a copy of which you forwarded to us by facsimile on October 12, 1993. As you know, there was apparently some confusion in referring your letter to us. We apologize for that confusion and the resulting delay in responding. Your question relates to the application of tax to a vehicle that you leased in New York and have now brought into California.

My understanding is that in September, 1990 while you were a resident of --- ---, New York, you leased a 1990 Toyota Camry automobile, through T--- C--- Inc. in ---, New York. In November, 1992, you moved to San Jose and are now a California resident. The lessor informed you that under New York law they are required to pay New York sales tax "up front," on the full purchase price of the vehicle. The lessor added the amount of tax they had already paid to New York State to the total cost of the vehicle. The lessor then calculated your monthly rental payments based on the total cost (including the tax paid by the lessor). You ask whether the

amount of sales tax previously paid by the lessor in New York and collected from you on a monthly installment basis can be allowed as a credit against your California tax liability.

In California the general rule is that a lease of tangible personal property is a continuing sale and purchase. For most leases, the applicable tax is the use tax which is measured by rentals payable and which must be collected by the lessor from the lessee at the time rentals are paid. (Rev. & Tax. Code §§ 6006(g), 6006.1, 6010(e), and 6010.1 and Sales and Use Tax Regulation 1660(c)(1).)

A lessor leasing tangible personal property in substantially the same form as acquired may elect to pay California tax measured by its purchase price. A lease of such California tax-paid property is not a taxable continuing sale. The lessor may make such an election by paying California sales tax reimbursement or use tax to its vendor when purchasing the property or by paying use tax measured by purchase price directly to the Board with its timely return for the reporting period in which the property is first placed into rental service. When a lessor makes an election to pay tax on purchase price (either to its vendor or by a timely payment directly to the Board), it is making an election to be treated as the consumer of the property rather than the reseller to the lessee. Unless provided by statute otherwise, it can make such an election only if its use would be subject to use tax. (Cf. Rev. & Tax. Code § 6094.1.)

The question here is whether the lessor is entitled to a credit in California with respect to its payment of New York tax measured by purchase price such that your vehicle is regarded as California tax paid in the hands of the lessor. California use tax is imposed with respect to property purchased out of state only if the property was purchased for use in California. When property is used outside California for over 90 days prior to its entry into California it is not regarded as purchased for use in California. The owner of that property (here, the lessor) does not owe use tax on its use of the property in California (in this case the lessor's own use).

In the present case, the lessor, purchased the vehicle no later than September of 1990, which is the time that your current lease term began. You brought the vehicle to San Jose, California in November of 1992. Therefore the vehicle was brought into California more than three years after it was purchased and first placed into rental service. Since the vehicle was purchased in New York more than three years ago and brought into California in November of 1992, the lessor is not regarded as having purchased it for use in California and the lessor therefore owes no tax with respect to the vehicle.

Since the lessor of your vehicle did not purchase the vehicle for use in California and therefore owes no use tax on its use of the vehicle in this state, it may not elect to pay tax to California measured by purchase price. California does have a provision that allows a credit against a person's California tax liability for that person's payment of tax to another state. (Rev. & Tax. Code § 6406.) Here, however, the lessor paid the New York tax but owes no California tax, and has no election to pay California tax, against which to take a credit for such

New York tax. Since no California tax has been paid on the purchase price, the lease is a taxable continuing sale. As noted above, you are the person owing that tax. The lessor, who paid the New York tax, has no California tax liability against which it may take a credit.

If you have further questions, feel free to write again.

Sincerely,

Gerald Morrow
Tax Counsel

GM/md
Enclosures

cc: Ms. Oveta Riffle

Ms. Cheryl A. Hronec
Consumer Use Tax Section - MIC:37

Ms. S--- L---
Leasing Customer Service
T--- M--- C--- C---
XX --- --- Road, Suite XXX
---, NY XXXXX

San Jose - District Administrator