

**STATE BOARD OF EQUALIZATION**

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December 16, 1992

BURTON W. OLIVER  
*Executive Director*

Ms. E--- -. S---  
Credit and Collections Manager  
B--- E--- E--- Company  
P. O. Box XXXXX  
R---, VA XXXXX-XXXX

Re: B--- E--- L--- Company  
J--- I--- Inc.  
SR --- XX-XXXXXX  
Taxability of Rentals to the U. S. Navy

Dear Ms. S---:

In your letter to this office dated October 8, 1992, you requested this office's assistance in explaining to the Department of the Navy in Oakland, California, why it is necessary to charge use tax on vehicle rentals to the Navy. You stated in our recent telephone conversation that your company rents vehicles directly to the Navy on short-term contracts. The vehicles are used to carry and install telephone poles at various locations on a government installation.

The vehicles rented to the Navy are considered to be "mobile transportation equipment" as defined by California Sales and Use Tax Regulation 1661. The use tax is imposed on the lessor of any mobile transportation equipment leased to the U.S. Navy. This means that B--- E--- will be responsible for the use tax and the U.S. Navy is not subject to the tax. However, if B--- E--- has a contract with the U.S. Navy that permits B--- E--- to pass along any costs or expenses that B--- E--- incurs in fulfilling the lease contract, then B--- E--- has a contractual right to be reimbursed for the use tax that it must pay.

Regulation 1661(e)(2) states, in part:

"On and after September 30, 1980, 'fair rental value' means the rentals required by the lease, except where the Board determines the rental receipts are nominal. Fair

rental value does not include any payment made by the lessee to reimburse the lessor for the lessor's use tax, whether or not the amount is separately stated, and regardless of how the charge is designated in the lease documentation and invoices. Lump-sum charges to the lessee will be assumed to include reimbursement for the lessor's use tax whether or not any statement to that effect is made to the lessee."

A copy of this regulation is enclosed with this letter.

The fact that other Navy installations routinely reimburse B--- E--- for the use tax to be paid on the equipment rentals indicates that there is a probability that a contractual right to the reimbursement is contained in the lease contracts.

However, B--- E--- should not represent to the U.S. Navy that it is charging it tax on the invoices billed. This is incorrect. B--- E--- is solely subject to the tax.

Very truly yours,

Thomas J. Cooke  
Tax Counsel

TJC:wk

Enclosure - Regulation 1661