

M e m o r a n d u m

570.1677

To :**Date :** August 25, 1975**From :** Legal Counsel (HLC)**Subject :**

This is in reply to your memorandum dated August 13, 1975, concerning a petition for refund by subject taxpayer.

We understand that taxpayer sold a vehicle to _____ a holder of a Utah seller's permit. Taxpayer originally collected sales tax reimbursement on the sale, but refunded it to _____ when _____ furnished a resale certificate. The sale was held not to be exempt during an audit of taxpayer and tax was assessed and collected. _____ leased the vehicle to a California resident, _____. _____ states that Utah tax was paid on the lease payments. Taxpayer has petitioned for a refund of the tax paid. You inquire whether a refund should be allowed, and, if it should be, whether tax applies to _____ or _____, and if either _____ or _____ is entitled to a credit for tax paid to another jurisdiction.

It is our opinion that taxpayer is entitled to a refund. Section 6091 of the Revenue and Taxation Code provides that the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes a resale certificate from the buyer. The certificate is not absolutely necessary, and, regardless of the validity of the certificate accepted by taxpayer, it has been shown that the vehicle was actually resold (leased) by the purchaser.

It is also our opinion that _____ is required to collect use tax from _____ since _____ is a retailer deriving rentals from a lease of tangible personal property situated in this state and is thus engaged in business in this state. See Sales and Use Tax Regulation 1683(c). _____, as the consumer, is also liable for the use tax.

We do not believe that any credit is due for tax collected and paid to Utah. The Utah Code, Section 59-15-4 (h) provides that tax need not be paid if the leased property is used exclusively in a foreign state. Utah Regulation S32 states that if the leased property is used exclusively outside Utah and an affidavit is furnished to the lessor to this effect, the tax does not apply. California Code Section 6406 provides for a credit for taxes imposed by any other state upon the property and paid by the consumer or retailer. The Utah law does not impose a tax on the retail to _____, so no credit applied under the Section 6406. _____ or _____ should apply for a refund of the tax erroneously paid to Utah.