



STATE BOARD OF EQUALIZATION

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January 29, 1997

Ms. J--- L. P---
---, --- & --- LLP
XXX ---, Suite XXX
--- ---, CA XXXXX

Re: L--- N--- G---, Inc.
Account No. S- -- XX-XXXXXX

Dear Ms. P---:

I am writing in response to your letter dated November 26, 1996 to Supervising Tax Counsel David H. Levine concerning your proposed method to report and pay sales and use tax due from your client, L--- N--- G---, Inc. (L&G).

You have not included, for our review, written copies of any of the contracts which you mention, and we are, therefore, unable to determine whether we agree with your characterization of their provisions. This opinion letter is based upon your characterizations of the contract provisions rather than the actual contract provisions. If we were to review the actual contracts in question, our opinion might be different.

You write that L&G rents small pick-up trucks and cargo vans to customers of H--- D--- U---, Inc. (HD) for short terms, generally three hours or less. For purposes of this opinion letter, we assume the vehicles are not mobile transportation equipment as that term is defined in Revenue and Taxation Code section 6023.

L&G has no California rental locations other than HD outlets. You indicate that the vehicle rental agreement is between L&G and the individual HD customer, and it explicitly provides that HD is *not* a party to the contract and accepts no responsibility or liability under the contract.

According to your letter, the vehicles are rented by the customers at HD service counters. You state that HD employees handle all facets of the rental arrangements, including assisting the customers in completing the rental forms, processing all paperwork, and checking the vehicles in and out. HD collects the rental amounts on behalf of L&G, and also adds and collects California use tax from the customers on the rental receipts. The transactions are recorded on HD's point of sale computer system, which tracks revenue and use tax collected.

The contract between HD and L&G requires HD to remit to L&G the net proceeds from the rental agreements, less the use taxes collected and an agreed fee payable by L&G to HD. The contract also states that HD assumes responsibility for the remittance of collected sales tax to government authorities. (We assume for purposes of this opinion letter that the language of the contract also covers remittance of collected *use tax*.)

The rental receipts and use taxes collected by HD for L&G are included by HD in its own receipts, and the use taxes are remitted to the state by HD along with the taxes which HD remits for its taxable sales. You indicate that, "L&G understands that it must hold a [California] seller's permit and continue to file sales tax returns in California, even though the rental receipts and use tax on rental payments is included on HD's returns."

You state that, "L&G would like written approval from the State Board of Equalization with respect to HD including L&G's rental receipts and use taxes due in HD's sales tax returns."

Discussion

Since your letter indicates that rental fees and use tax are collected on the rental of L&G vehicles, we assume for purposes of this opinion letter that these vehicle rentals are leases of tangible personal property which are continuing sales and purchases. (See Rev. & Tax. Code §§ 6006(g), 6006.1, 6010(e), 6010.1.) As such, the lessee owes use tax on rentals and the lessor must collect the tax from the lessee at the time rentals are paid by the lessee.¹ (Reg. 1660(c)(1).)

As regards the filing of returns, Revenue and Taxation Code section 6452 requires that,

"For purposes of the *use tax*, a return shall be filed by every retailer engaged in business in this state.... Returns shall be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath..." (Emphasis added.)

In other words, there is a mandatory requirement that a use tax return be filed by every retailer engaged in business in California, which includes a lessor such as L&G, although the return may be signed by an authorized agent of that retailer. This means that L&G must file a separate return from any return filed by HD. However, L&G may authorize an agent, such as HD, to prepare and sign the returns for it.

As the lessor of tangible personal property, L&G is required to report the rentals payable by the lessees during the preceding reporting period, and show on its return the amount of the taxes for the period covered by the return. (Rev. & Tax. Code § 6457.) The return, together with the remittance of the amount of the tax due (unless otherwise remitted in the manner prescribed by Revenue and Taxation Code section 6479.3), shall be delivered by the person required to file the return to the State Board of Equalization. (Rev. & Tax. Code § 6454.)

¹ HD, of course, is obligated to assure that any amounts paid to it as tax are remitted to the Board. (Cf. Reg. 1660(c)(9)(B).)

In conclusion, L&G is required by statute to file a separate return reporting the rentals payable and the taxes due on its vehicle rentals. This return, although required to be separate from returns of HD, may be prepared and signed by HD if it is acting as L&G's authorized agent. As discussed earlier, since we do not have copies of the relevant contracts to review, we cannot determine whether we agree with your characterization of their provisions. I note, therefore, that we cannot ascertain if we agree with your assertion that HD is not the lessor, and that if we were to review the actual language of the contracts, we might conclude that HD is in fact leasing the vehicles from L&G and then subleasing them to its customers.

I hope this information is of assistance. Please write again if we may answer any further questions, and include copies of the customer rental agreement, the contract between L&G and HD, and any other relevant contracts.

Sincerely,

Sharon Jarvis
Senior Tax Counsel

SJ:rz

cc: Out-of-State District Administrator - (OH)
Mr. William D. Dunn - MIC: 49
Mr. Dennis Fox - MIC: 92