

**STATE BOARD OF EQUALIZATION**

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January 22, 1996

Mr. A--- P---
A--- P--- & Associates
XXXX --- Ct.
--- ---, CA XXXXX

BURTON W. OLIVER
Executive Director

Re: Account No. SR – XX-XXXXXX

Dear Mr. P---:

Please excuse our tardy response to your letters. When I reviewed the Board's central file for P--- Corporation (P---) before responding to your letter dated October 28, 1995 and the materials which you sent by letter dated November 20, 1995, I discovered that your original letter dated February 15, 1995 was in that file and had never been forwarded to the Legal Division. I apologize on behalf of the agency for any inconveniences which this may have caused you or your client.

You have written requesting advice in regards to an issue which surfaced in an audit of P---. You state:

"My client, P--- Corporation, recently completed a Sales Tax audit. It was determined that additional taxes were due as a result of equipment being used in a manner that was deemed to be a taxable event. We agree with this finding. We are asking for permission to pay all sales taxes, on this equipment, now and avoid the record keeping. The amount owed is small compared to [the] amount of time this record keeping would entail. All future equipment will be purchased post sales tax." (P--- letter, dated 2/15/95.)

I have reviewed the audit comments (dated 12/18/94) on page 3 of Schedule 12 from the audit of P--- covering the period April 1, 1991 through September 30, 1994. The auditor notes that P---, in addition to providing consulting services, leased equipment which it "has chosen to purchase ex-tax," and "charged tax on rental receipts." In responding to your opinion request, I assume that this is the equipment about which you are writing. I also assume, for purposes of this opinion letter, that P--- leases the equipment in substantially the same form as acquired.

Discussion

Under the California Sales and Use Tax Law, a retail sale in California of tangible personal property or a retail sale outside of California of such property for use in California is taxable unless otherwise exempt. (Rev. & Tax. Code §§ 6051, 6201.) A lease of tangible personal property is regarded as a continuing sale and purchase of the property unless the lessor leases the property in substantially the same form as acquired, and sales tax reimbursement or use tax was timely paid measured by the purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1; Reg. 1660(b).) To be timely, either sales tax reimbursement or use tax must be paid by the lessor to its vendor when the property is purchased, or the lessor must make an election to pay tax measured by the purchase price of the property by reporting and paying timely such tax with its return for the period during which the property is first placed in rental service. (Reg. 1660(c)(2).) The tax on a lease which is a continuing sale and purchase is a use tax owed by the lessee which is measured by the rentals payable on the lease. The lessor is required to collect the tax from the lessee and pay it to the Board of Equalization. (Reg. 1660(c)(1).)

Thus, since P--- neither paid sales tax reimbursement nor use tax on the equipment at the time of purchase and did not timely elect to pay the tax with its return for the period during which the equipment was first placed in rental service, the lease of the equipment by P--- is a continuing sale and purchase. P--- is not permitted to now elect to pay tax measured by the purchase price of the equipment, but rather is obligated to collect use tax from its lessees as measured by the rental receipts derived from the leases of the equipment. (Action Trailer Sales, Inc. v. State Bd. of Equalization (1975) 54 Cal.App.3d 125.) As to future equipment which P--- purchases and leases in substantially the same form as acquired, use tax will not be due on the rental receipts as long as P--- purchases the equipment tax-paid or timely elects to pay tax on the equipment when it is first put into rental service. (Rev. & Tax. Code § 6006(g)(5); Reg. 1660(c)(2).)

I hope this information is of assistance to you and your client.

Sincerely,

Sharon Jarvis
Staff Counsel

SJ:rz

cc: --- --- District Administrator - --