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**STATE BOARD OF EQUALIZATION**

July 31, 1997

Dear

Your letter dated May 21, 1997, has been referred to me for response. You request a legal opinion pursuant to Revenue and Taxation Code section 6596. However, this opinion does not come within the provisions of section 6596 because you have not identified your client. Section 6596 sets forth the circumstances under which a taxpayer may be relieved of liability for taxes when relying on a written response to a written request for a legal opinion. In order to come within the provisions of section 6596, all relevant facts, including the identity of the taxpayer must be disclosed.

You present the following factual background:

"Our client, domiciled outside the United States, does business as a travel agent selling 'tour packages' to foreign citizens vacationing in California. The tour packages provide our client's customers, under one lump sum charged, with airline tickets, hotel accommodations, bus service, passenger car rental, and other miscellaneous items commonly included in a vacation package. Our client pays tax on the purchase price of all taxable components of any tour packages sold.

"In order to provide better service to its customers, a large rental car company located in California (the 'Lessor') recently established a separate legal entity that operates as a booking agent for the Lessor. The booking agent maintains books and records separate and apart from the Lessor. The booking agent assists our client by providing information on available passenger car rental discounts, which arise either from renting a large number of passenger cars (quantity discounts) or from renting the cars during off peak times of the year. Ordinarily, the booking agent, on behalf of our client, negotiates a 'package deal' with the Lessor at a reduced rental rate thus saving our client money. The booking agent's normal booking fee is approximately 20 percent of the amount paid to the Lessor of the travel agent for the passenger car rental and in no circumstances is the booking fee greater than 25 percent of the amount paid to the Lessor by the travel agent. In addition to providing a booking service for the Lessor, the booking agent also provides travel brochures and travel guides highlighting areas of interest within a short driving distance. These travel brochures and travel guides are provided to the travel agent at no charge.

"The following scenario is representative of the aforementioned transaction when our client (on behalf of its customers) rents passenger cars from the Lessor and the transaction is negotiated by the booking agent: Our client rents passenger cars from the Lessor (after the booking agent negotiates a price per week on behalf of the Lessor and our client) for \$80 per car plus applicable tax, which our client pays to the Lessor. The booking agent then separately invoices our client an additional \$20 per car for booking services charged for negotiating the transaction. Therefore, there are two separate and distinct transactions being conducted in the process outlined above: (1) our client rents passenger cars from the Lessor, and (2) our client is charged a booking service fee from the booking agent."

You ask whether charges imposed on your client for "booking fees" by the booking agent are subject to tax.

#### DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.)-When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.) Neither the sales tax nor the use tax applies to charges for services not constituting sales of tangible personal property. (Reg. 1501.)

With respect to the leases at issue, we assume that none of the property transferred constitutes mobile transportation equipment as defined in Revenue and Taxation Code section 6023. The term "lease" includes rental, hire and license. (Reg. 1660(a) (1).)

A lease of tangible personal property in California is a continuing sale and purchase unless the lessor leases the property in substantially the same form as acquired and timely pays sales tax reimbursement or use tax measured by the purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1, 6010(e)(5), 6010.1; Reg. 1660, subds. (b)(1) and (c)(2).) When a lease is a continuing sale and purchase because either or both of the foregoing conditions have not been satisfied, the lease is subject to use tax measured by rentals payable. (Reg. 1660(c)(1).) The lessee owes the tax, which-the lessor is required to collect from the lessee and pay to this board. (Rev. & Tax. Code §§ 6202; 6203, 6204; Reg. i660(c)(1):)

You state that your client leases each vehicle from the car rental company ("Rental Company") for \$80 and pays the applicable tax to the Rental Company. The

question is whether the additional \$20 charge per vehicle by the booking agent should be included in the measure of tax as part of the taxable rentals payable.

Our understanding is that the Rental Company did not timely pay tax measured by the purchase price of the vehicles. Thus, the leases are continuing sales and purchases, and the total amount your client is required to pay to rent the vehicles is subject to tax, that is, \$100, the \$80 remitted to the Rental Company plus the \$20 remitted to the Rental Company's subsidiary.

We note that the booking agent is a separate legal entity established by the Rental Company to perform part of the administrative functions related to its car rental business. The Rental Company cannot decrease the measure of tax by separately stating a charge for a portion of its overhead expenses and requiring your client to pay that portion to a separate entity.

If you have any further questions, please write again.

Sincerely,

Sophia J. Chung  
Tax Counsel

SHC:rz

cc: Out-of-State District Administrator (OR)