



STATE BOARD OF EQUALIZATION

March 11, 1993

This is in response to your letter dated February 3, 1993, which was received here on March 8, 1993.

You ask our opinion as to application of the sales tax law to a certain described transaction. We understand that Lessor and Lessee entered into a "short form agreement" outlining the basic terms and conditions of an equipment lease. Included in the agreement were the parties, cost, rental amount and lease termination option. The agreement was signed by both parties within 90 days of the "first functional use" of the equipment by Lessee. However, the funding and drafting of the final document occurred after the 90-day period."

You inquire as to whether under these facts an acquisition sale and leaseback has been "consummated" within the meaning of that term as it is used in California Revenue and Taxation Code section 6010.65 (a) (2) . You further inquire as to whether the sale/leaseback transaction would be exempted from additional taxation, since the lessee has paid sales tax reimbursement on its original purchase of the equipment.

It is our opinion that the transaction in question would qualify as an acquisition sale and leaseback under section 6010.65. The transaction would have been consummated on a timely basis, notwithstanding the fact that the sale and leaseback transaction may have remained executory in part for a period beyond the 90-day limitation date. Both the sale and the leaseback transaction would thus be excluded from the definition of "sale" and "purchase" (and thus tax free), since the lessee paid tax at the time of the original acquisition.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr