STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
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April 2, 1990

REDACTED TEXT

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District use tax – leases of construction equipment

Dear REDACTED TEXT:

In your January 8, 1990 letter to Mr. Ronald L. Dick, Tax Counsel, which was referred to me for reply, you request our opinion on the application of district transactions (sales) and use taxes to rental charges by X CORPORATION, your client, to its lessees on its short-term leases of tax-paid construction lift equipment. You write:

"General Description of Business:

"X Manufacturing is a DBA for X CORPORATION which also does business as X Equipment Rental which engages in the business of short-term rentals (i.e., daily, weekly, or monthly rates) of construction lift equipment. X Equipment Rental pays the sales tax at date of purchase on the equipment's purchase price. The equipment is delivered to X Equipment Rental's only yard in Modesto, California, Stanislaus County. Rental agreements are oral and the equipment can be returned at any time at the option of the renter. The rental charges would be billed based on the lowest rate available for the rental period. (If the equipment were rented for less than 5 days, the daily rate would apply; more than 5 days, but less than 3 weeks, the weekly rate would apply; more than one month, the monthly rate would apply.)

"Point of Contention:

"Dennis E. Goodman, Senior Tax Auditor from the Modesto office of the Board of Equalization, in a routine audit of X Equipment

Rental has proposed levying an additional ½% to 1% sales tax on any piece of equipment that is rented in a sales district that levies an additional tax at any time within a ninety-day period beginning with the date of purchase of the equipment. He proposes that the additional tax be paid to the first district in which the equipment is leased, in cases where the equipment may be leased in more than on special district during the ninety-day period. As support for his position he has supplied X Equipment Rental with a letter from you dated August 23, 1989 (copy of which is enclosed) and Regulation 1823.

"We would like your opinion on Mr. Goodman's position. There are several issues that we do not believe are addressed in your letter of August 23, 1989 or Regulation 1823.

"(1) All rentals are short term. There is never any intention of transfer of ownership to a renter. The renter may terminate the agreement at any time. The rental agreements are oral.

"(2) It is the contention of X Equipment Rental that the beneficial use of the equipment belongs to them (the owners) at their place of business, Modesto, California, and not to the renters who only receive short term utilization of the equipment.

"(3) The recordkeeping necessary to implement Mr. Goodman's taxing theory is onerous and makes impossible timely filing of accurate sales tax returns. At the time of purchase it is not known where the equipment will be rented.

"(4) If Mr. Goodman's contention is correct, then the tax district that has a higher tax rate would have to be determined to be the district 'in which the property was intended to be used,' and therefore, would be entitled to the full 1 ½% to 2 ½%, not just the increased tax. This would call for a transfer of money paid to Stanislaus County to the higher taxing district."

Opinion

If a person purchases tangible property in a transaction which was exempt from any district transactions (sales) tax, but the purchaser purchases the property for use within a district, then the district use tax will apply to the transaction. (Transactions & Use Tax Reg. 1823(a)(2)(B) and (b)(1).) In the case of property which was purchased tax paid and then leased by a lessor in the same form as acquired, the leases are not taxed as continuing sales and purchases, and it is the lessor's use, not the lessee's use, of the property which determines whether the property was purchased for use within a district (Reg. 1660(c)(2).).

In applying district transactions and use taxes to sales and leases of tangible property, the Board incorporates, to the greatest extent possible, sate Sales and Use Tax Law provisions. (Reg. 1821.) In the case of the state Sales and Use Tax Law, if a purchaser purchased property outside of California, but later brought the property into California, the provisions of Regulation 1620(b)(3) would determine whether use tax was due. If the property is first functionally used in California, state use tax will apply, regardless of any subsequent use. If the property is first functionally used outside of California, but brought into California within 90 days after the purchase, and thereafter not stored or used outside of California at lease half the time in the next six months, the state use tax will be due. In a situation in which a lessor outside of California delivers property into California in order to fulfill delivery to a specific lessee, the first functional use would be considered to have occurred outside of California. However, if the lessor brought the property into California prior to entering into a specific lease with a lessee, then the first functional use would occur in this state. (Business Taxes Law Guide Annotation 570.0510 (4/7/78).) These tests for determining whether property is purchased for use in California are applied to districts by substantiating "district" for "California."

In applying these rules to the situation you have described, our opinion is that your client is liable for the district use tax of a district in which the lessees, individually or collectively, use the construction lift equipment more than half the time in the first six months following your client's first lease of the equipment. Our view is that your client's first functional use of the equipment occurs in Stanislaus County, assuming that is where your client negotiates leases with lessees. If in a period of 90 days following the first lease of each item of equipment, the property is not used by any lessee within any district, then no district use tax will apply. Your client's use of the property outside of any district for the first 90 days establishes the presumption that the property was not purchased for use within a district. However, if within 90 days following the first lease, any lessee uses the equipment within a district, then that district's use tax will apply, if that lessee and any other lessees collectively lease the property for use within that district more than half the timer in the next six months. If the district use tax of one district (or two districts in the same county) applies, no other district's use tax can apply.

We cannot agree with your contention that this type of recordkeeping would be unduly burdensome to your client. Your client would be required only to keep track of the location of the items of equipment for the first nine months at most, in order to substantiate that an item of equipment was not purchased for use within a district. If no lessee leased an item of equipment for use within a

district within 90 days following the first lease, that too would end your client's recordkeeping obligations.

The allocation of the 1 ¼% Bradley-Burns uniform local sales and use taxes to the cities and counties is not affected by the issue of whether district use tax applies. If your client purchased its equipment from a California seller, the Bradley-Burns sales tax is allocated to the seller's place of business. (Reg. 1802.) If your client purchased its equipment from an out-of-state seller not engaged in business in California, then your client will report and pay Bradley-Burns use tax allocated to your client's first place of use which is in Stanislaus County. (Reg. 1803(b).)

I enclose Regulations 1620, 1660, 18022, 1803, 1821 and 1823 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Senior Tax Counsel

JA:cl
Enclosures

bc: Sacramento District Administrator
Mr. Dennis Goodman, Modesto Office