



STATE BOARD OF EQUALIZATION

December 21, 1965

Gentlemen:

This is to inform you of the position we have taken with respect to your petition for redetermination of sales and use tax. We are recommending to the Board that tax be redetermined by deleting disallowed bad debt deductions on rentals. We regret we can recommend no adjustment as to the second protested item, out-of-state rentals.

The Board has recently considered the application of Section 6055 of the California Sales and Use Tax Law to rental transactions. This section relieves retailers from liability for sales tax insofar as the measure of tax is represented by accounts which have been found to be worthless and have been charged off for income tax purposes. The Board has determined this provision applies to lessors as well as sellers. This determination reverses earlier interpretations which accounts for the reason our auditors disallowed this item in the audit.

Lessors are not authorized under the statutory provisions of the Sales and Use Tax Law to acquire property ex tax by giving a resale certificate because they know at the time of acquisition that such items are not purchased for resale. Because lessors were at a competitive disadvantage, the Board, by regulation, allowed such acquisition (see Business Taxes General Bulletin 65-3, a copy of which is enclosed). In allowing this authorization, the Board did not see fit to go further and allow other exemptions or exclusions which were part of the Sales and Use Tax Law. Indeed, Bulletin 65-3 specifically states in paragraph 4:

“A purchaser of tangible personal property used for leasing purposes, who desires to take advantage of the election authorized by the law, or by this bulletin, must pay tax in accordance with the express terms of such authorization. If the purchaser does not pay tax measured by receipts from leases and rentals of the property, he has not exercised the election and, accordingly, must pay the tax measured by the purchase price.”

Thus, Bulletin 65-3 allows the lessor to reduce his taxes because rental receipts on one or two year leases are ordinarily less than acquisition cost. In so doing, the Board put lessors on equal footing with automobile dealers as to in-state leases. By the same token, they determined not to carry this further and make applicable other exemptions which are applicable only to sales. It is clear, therefore, that if any discrimination exists on out-of-state leases, it is because of the statutory provisions and the Board has, in part, alleviated the discrimination by regulation.

Our recommendations will be presented to the Board for their consideration. You will receive official notice of their action in due course.

John H. Knowles
Associate Tax Counsel

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