



STATE BOARD OF EQUALIZATION

October 29, 1956

M--- and W---
Attorneys at Law
XXX --- Street Building
--- XX, California

Attention: Mr. W---

Re: --- & --- Lease Plans
Account --XXXXXX

Gentlemen:

We have considered the information presented with respect to the petition for redetermination filed on behalf of the above taxpayer. We understand the taxpayer enters into lease agreements whereby it leases automobiles to customers for a term of not less than 12 months and not to exceed 40 months. The lessee agrees to pay a fixed rental per month equal to 2% of the base price of the automobile for Fords, Chevrolets or Plymouths, or 3 ½ % of the base price of any other automobile. The base price is defined as being \$50.00 plus the dealer's invoice price to the lessor, plus accessories and delivery and handling charges. It is the practice for the lessees to return the cars either within or at the end of the 12-month period pursuant to section 15 of the lease agreement which allows the lessee to return the car "in the event the condition of any car becomes such that the continued repair and maintenance thereof is unwise in the judgement of the lessee."

Under Section 10 of the agreement, as soon as the car is returned by the lessee, the lessor will sell the car. If the sale price is equal to the base price reduced by an amount equal to 2% of the base price of Fords, Chevrolets or Plymouths, or 3 ½ % if the car is another make, multiplied by the number of months for which rent has been paid by the lessee, then the lessor will retain the sale price. If the sale price exceeds the amount computed as above, the lessor retains the first \$50.00 of the excess and the amount above \$50.00 is divided equally between the lessor and the lessee. If the sale price is below the price computed as above, the lessee may either pay the difference between the sale price and that price to the lessor or have the car returned to him. In which case, the rental will be continued or the lessee may sell the car for the account of the lessor. If the car is sold, settlement is made in the same manner as if the lessor sold the car.

We understand that in most instances the automobiles are sold for an amount in excess of the base price less the percentage deductions, but rarely does a sale price equal or exceed by \$50.00 the base price less the percentage deductions.

We are also advised that the reason that the lessor requires the lessee to make up the difference between the base price less the percentage deductions and the selling price of the automobile, in those instances where this occurs, is to make sure that the lessee will take reasonable care of the automobile while it is in his possession.

We think that the above facts indicate that the transactions in question are not leases in lieu of sales within the meaning of Ruling 62. We will have our district office make a reaudit on the basis of the above conclusion.

Very truly yours,

John H. Murray
Associate Tax Counsel

JHM:rc

cc: --- --- - Auditing