

M e m o r a n d u m**330.1830**

To: Sacramento – Auditing (JAN)

Date: March 25, 1969

From: Tax Counsel (TPP:JM)

In your memo of February 27, 1969 you request an opinion as to when advance rental payments should be reported and whether deposits are considered advance rental payments.

We understand that the taxpayer is in the business of leasing automobiles. Its policy is to require certain customers to pay deposits and in some leases requires that the final rental payment be made at the time the lease commences.

We have examined the lease agreement attached to your memo. Item 2, Deposit, provides that the deposits are not considered as payment of any rent and in no manner releases lessee from his obligation to pay the rentals. The deposit is refundable upon termination of the lease.

It is our opinion that tax does not apply to the deposit. However, in those instances in which lessor and lessee verbally agree to apply the deposit to the final payment of the contract upon termination, tax would apply to the amount of the deposit applied to the final payment and should be reported in the period in which applied.

Advance payments of rent generally are considered as accruing on the day on which the rent is due, however, Section 6203 of the Revenue and Taxation Code provides in pertinent part that:

“As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.”

Accordingly, for administrative purposes it is our opinion that the advance payments should be reported in the period when received. Advance payments for rent generally are not refundable and constitute rental receipts upon which tax should be collected by the lessor at the time the rentals are paid by the lessee. The fact that the taxpayer carries the advance payments on his records as current liabilities is not controlling for sales and use tax purposes.

For your additional information, we are enclosing a copy of a letter written by A. Wells Peterson on October 11, 1967 (particularly last paragraph), which states our position in those instances of advance payments collected in the 4 percent tax period but applicable to the rental of a final payment which falls in the 5 percent period.

JM:smb [lb]