M e m o r a n d u m

330.2289

To: Bakersfield – Auditing (CWS) Date: August 1, 1978

From: Donald J. Hennessy
Tax Counsel

Subject: Place of Incidence of Tax in a Series of Leases

This is in reply to your memorandum of August 2, 1985 regarding a situation in which "…tangible personal property is being leased and subleased in a series of at least three lessors. We are auditing the first sub-lessor and cannot readily determine whether the property was tax paid on the part of the first lessor. Our taxpayer has stated that he did not give a resale certificate to the first lessor, and our taxpayer is not reporting tax on his lease to the second sublessor. We do not know how the second sub-lessor is handling the tax. Our taxpayer says he has not received a resale certificate from the second sub-lessor."

In a recent conversation with Assistant Chief Counsel Gary Jugum, you were advised to go to the end of a chain of subleases and assess the tax against the last sublessor. You believe that the more logical place to tax would be the first lessor, assuming that no tax has been paid anywhere. You request our opinion on "a definite point" at which tax applies.

The "definite point" at which tax applies is the end of the chain, i.e., the sublessor leasing to the consumer, as indicated by Mr. Jugum. We attach a copy of a December 5, 1974 memorandum by then Tax Counsel Glenn Rigby to Out-of-State Auditing (DMA), on the subject of chain leasing. As such memo points out, assuming no tax paid anywhere, all leases prior to the lease to a consumer are leases (sales) for resale, whether or not a resale certificate is given. If uncollectible from the last sublessor, we can look only to the consumer/lessee for the tax.

DJH:rar

Attachment