



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE (916) 324-2634
FAX (916) 323-3387

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Executive Director

May 27, 1997

VIA FACSIMILE AND U.S. MAIL

Ms. M--- K---
Senior Accountant
R--- L--- Inc.
XX --- --- Avenue
---, -- XXXXX

**Re: R--- L--- Inc.
SY --- XX-XXXXXX**

Dear Ms. K---:

This responds to your letter dated April 16, 1997 and the letter from Ms. D--- R--- dated March 21, 1997 (received via facsimile by our Legal Division on March 24, 1997).

The letters raise questions related to backdrops sold and rented by R--- L--- Inc. (R---). Ms. R---'s letter states:

“We sell computer painted images that are used for television and film backdrops. There are occasions where we buy these drops back at a percentage of the original cost from the original purchaser. We now put them into rental stock which is rented on several occasions.”

Questions

“Do we need to charge tax on the first sale only? Do we need to charge tax on the rental drops each time we rent them? If a customer purchased a drop for \$10,000.00 and paid tax on that sale[,] [c]an I credit them the \$2,000.00 buy back and not the tax on the \$2000.00?

“If we purchase a drop from the manufacturer specifically for our rental stock and we pay tax on that item at the time of manufacturing[,] [d]o we have to charge tax on the rental of that drop?”

“A customer from a state which we are not required to charge tax buys a mural with no tax. We then buy back the drop for \$2,000.00. Do we have to pay the tax on the \$2,000.00 buy back only and not the subsequent rentals[?]”

Discussion

Under the California Sales and Use Tax Law, a retail sale in California of tangible personal property, e.g., backdrops, or the storage, use, or other consumption of property purchased at retail outside of California for use in this state is taxable, unless otherwise exempt. (Rev. & Tax. Code §§ 6051, 6201, 6401.) A lease (which generally includes rentals) of tangible personal property is regarded as a continuing sale and purchase which is subject to tax *unless* the lessor leases the property in substantially the same form as acquired, and sales tax reimbursement or use tax is timely paid measured by the purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1; Reg. 1660(b).) To be timely, either sales tax reimbursement or use tax must be paid by the lessor to its vendor when the property is purchased, or the lessor must make an election to pay tax measured by the purchase price of the property by reporting and paying timely such tax with its return for the period during which the property is first placed in rental service. (Reg. 1660(c)(2). See also Rev. & Tax. Code §§ 6094.1, 6006.5; Reg. 1660(c)(4).) The tax on a lease which is a continuing sale and purchase is a use tax owed by the lessee which is measured by the rentals payable on the lease. The lessor is required to collect the tax from the lessee and pay it to the Board of Equalization. (Reg. 1660(c)(1).)

Thus, when R--- makes a retail sale in California of a backdrop, sales tax applies measured by the gross receipts from that sale. If R--- later buys the backdrop back from a California customer, that is a new transaction subject to tax, as is a buy-back from an out-of-state customer for use in California, e.g., for rental. If R--- is going to lease the backdrop in substantially the same form as acquired, R--- may chose to timely pay the applicable sales or use tax on its purchase or use of the backdrop measured by the purchase price. (This rule also applies to a purchase of a backdrop from a manufacturer.) In such an instance, no further tax is owed when R--- leases the backdrop.

If R--- does *not* timely pay sales or use tax on its purchase or use of a backdrop, the subsequent rentals or leases of the backdrop in this state are continuing sales and purchases subject to tax measured by the rentals payable. As the lessor, R--- must timely collect that tax from its lessee and remit it to the Board.

I hope this information is of assistance. For your further information, copies of Sales and Use Tax Regulation 1660 “Leases of Tangible Personal Property,” and the Board’s Pamphlet

No. 46 "Tax Tips for Leasing of Tangible Personal Property in California" are enclosed. If you have further questions, please do not hesitate to write again.

Sincerely

Sharon Jarvis
Senior Tax Counsel

SJ:cl

Enclosures (Regulation 1660; Tax Tip Pamphlet No. 46)

cc: Ms. D--- R--- (R--- L--- Inc.)
--- District Administrator (--)
--- District Administrator (--)
--- --- District Administrator (--)