

M e m o r a n d u m**330.2887**

To: Les Sorensen

Date: July 13, 1984

From: Gary J. Jugum

Subject: S--- of C---, Inc.
S- -- XX-XXXXXX

On June 15, 1984, we discussed with Mr. Hennessy proper application of the lease tax provisions to certain leases and subleases involving the referenced taxpayer.

The facts are that the B--- (Bank) purchased certain items of tangible personal property without payment of sales tax reimbursement and without payment of use tax measured by the purchase price of the property. Bank leased the property to taxpayer who in turn leased the property to persons who functionally used the property. Taxpayer did not tender resale certificates to Bank. However, taxpayer did collect use tax from its lessees, measured by rental receipts collected from the lessees.

Since Bank had not obtained resale certificates from taxpayer, Bank paid to the Board an amount equal to the tax it would have been required to collect from taxpayer if the sales (leases) to taxpayer were retail transactions. Bank did not reimburse itself from taxpayer for these amounts.

In essence, the "tax" has been paid twice, and the question is - - who is entitled to a refund?

We believe that Bank is entitled to a refund of the amounts it paid to the Board. The reason is that tax was not paid on the lease from Bank to taxpayer; therefore, tax did apply on the lease from taxpayer to its sublessees.

Revenue and Taxation Code Sections 6006 and 6010 provide that "sale" and "purchase" do not include leases of tangible personal property as to which the lessor "...has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property." Taxpayer in fact paid nothing; therefore, taxpayer's leases to its lessees were "sales" and "purchases," and leases to taxpayer were sales for resale.

That taxpayer had not paid use tax on its acquisition of the property is further supported by the fact that taxpayer does not have in its possession the receipts described in Revenue and Taxation Code Section 6202.

GJJ:dah

cc: Don Hennessy