



STATE BOARD OF EQUALIZATION

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“Taxpayer”

Gentlemen:

Sections 6006, 6006.1, and 6010 of the Sales and Use Tax Law make the sales and use taxes applicable to gross receipts or the sales price on the continuing sale (lease) of personal property. Sales price and gross receipts are defined in Sections 6011 and 6012, respectively, as the “total amount of the sale or lease or rental price, valued in money, whether received in money or otherwise”.

Taxpayer leases personal property it has manufactured to various lessees within the state. The terms of taxpayer’s lease agreements provide that all taxes levied against the property will be borne by the lessee. In practice, these taxes are either paid directly by the lessee or are paid by the taxpayer for the account of the lessee, and thereafter collected, depending on how the tax is assessed. The question raised by you in your letter of December 8, 1968, is whether under these facts those increments of property tax are additions to the sales price or gross rents and are, therefore, subject to sales or use tax.

It is the state’s position that those increments are subject to tax. The rationale that applies the sales or use tax to the property tax rests on the theory that the property tax is a liability of the owner-lessor, and that the discharge of this obligation by the lessee, either directly or indirectly, is an additional component of rent.

We realize that the liability for the property tax, in terms of who shall be assessed for it, is covered by Section 405 of the Revenue and Taxation Code. Section 405 provides that the assessor shall assess all taxable property on the first day in March to the “persons owning, claiming, possessing or controlling it”. We agree with your conclusion that the assessor can assess either the lessor or the lessee of the property. However, this does not answer the question of who is primarily liable for the tax.

The general rule is that in the absence of a contrary agreement, the mere relationship of landlord and tenant ordinarily gives rise to no duty requiring the lessee to pay taxes and assessments levied against the leased property (see Hammond Lumber Co. v. Los Angeles (1936) 12 Cal. App. 2d 277.) Accordingly, the ultimate liability for payment of taxes is on the owner and not the lessee. This is so even if a statute allows assessment to the lessee. In Caldwell v. Moore (1849) 11 Pa. 581, the court pointed out that a statute permitting assessment in the name of the tenant was for the purpose of merely

facilitating the recovery by the state of its taxes and would not alter the ultimate liability of the owner for the payment of them (see Kentucky Farm and Cattle Co. v. Williams (1956) 140 Fed. Supp. 449).

In view of the foregoing, it is our opinion that the ultimate liability for the payment of taxes is that of the lessor, notwithstanding the fact that the statute authorizes that the lessee may be assessed. It is true that the lessor can, by contract, require the lessee to pay the taxes; however, without such stipulation the responsibility would ultimately be the lessor's. It is clear from this that when the lessor does so contract with the lessee, he is assuming a liability of the lessor's and this assumption is part payment for the use of the leased property and is part of the sales price or gross receipts.

We do not agree with your position that the tax payments are similar to optional maintenance contracts. I understand that you contend that the lessee, by virtue of preparing the personal property statement, particularly schedule F, has an option of paying the taxes directly to the taxing authority, by indicating that the assessment of possessed property be made in the name of lessee, rather than the lessor (taxpayer). The “option”, however, is not binding upon the assessor since he may assess either the lessor-owner or the lessee-possessor. In this sense, the payment of the taxes is not optional to the lessee.

I realize that there will be some practical problem arising from this conclusion because of the difficulty in determining what amount of taxes the lessee pays. However, Mr. Costa informed me that in his audit he made an approximate calculation in which your controller agreed was fair. I am enclosing his conclusions and calculations.

After reviewing these conclusions, please let us know if they are satisfactory and if you have any suggestions, or if it is not satisfactory, if you have an alternative.

Very truly yours,

Glenn L. Rigby
Tax Counsel

GLR:kc