

**STATE BOARD OF EQUALIZATION**

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November 15, 1989

J--- B---  
B--- D--- C---, Inc.  
XXX ---, Suite ---  
--- ---, CA XXXXX

B--- D--- C--- - SR -- XX-XXXXXX

Dear J--- B---:

This is in response to your letters of June 29, 1989 and October 30, 1989. We apologize for not corresponding with you sooner and regret any inconvenience caused by our delay.

We understand that you will be leasing equipment from a New Jersey supplier. You will then sublease the equipment to a sublessee in California. Upon termination of the sublease, you will charge the sublessee \$300 to ship the goods back to the New Jersey supplier.

You wondered whether the aforementioned \$300 charge was subject to California sales or use tax.

The answer to your question depends on several variables. First, if we assume that the property in question is leased in substantially the same form as it was acquired in, and, your New Jersey supplier reported tax to California based upon the purchase price of the property, then no further tax would be due on any amount under the sublease arrangement (See Rev. & Tax. Code §§ 6006(g)(5), 6010(1)(5); Reg. 1660(c)(5)). Second, even assuming the property was not leased to you in substantially the same form as acquired or tax had not been paid based on the purchase price, you, nevertheless, would still not be subject to tax based on the \$300 charge if the New Jersey supplier was collecting and reporting tax to California periodically under the prime lease (see Regulation 1660(c)(5)).

On the other hand, if you gave the New Jersey supplier a valid resale certificate and thereafter reported tax periodically under the sublease, the answer would depend on whether the \$300 charge was mandatory or optional. If the sublessee has the option to provide his/her own return transportation, the charge would not be taxable. However, if the sublessee, as a condition of the sublease, is required to pay you to ship the goods, the \$300 charge would be taxable (see Rev. & Tax. Code §§ 6011(b)(1), 6012(b)(1); BTLG Anno. 295.1690).

We are enclosing Tax Tips Pamphlet No. 46 relating to leasing of tangible personal property. This pamphlet relates to the general subject matter of your question and contains a copy of Regulation 1660, cited above. Please note the comment following the heading "Return Transportation Charges" on page 7 of the pamphlet.

Very truly yours,

E. L. Sorensen, Jr.  
Senior Tax Counsel

ELS:jb  
Enclosure

bc: San Jose District Administrator