

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

September 12, 1988

Mr. B--- W. F---
Leasing Accountant
M--- F---, Inc.
P. O. Box XX
--- ---, MN XXXXX

Re: SS -- XX-XXXXXX

Dear Mr. F---:

This is in response to your letter dated August 27, 1988 regarding the application of sales and use tax to a lease of a ready mix concrete truck. M--- owns a ready mix truck/mixer which it leases to a customer outside California. Upon termination of the lease, M--- will repossess the truck and it will be brought into California for lease to a California customer. By "repossess" I assume you do not mean that there is any change of ownership, but rather simply mean that M--- will retake possession upon termination of the lease. You state that M--- F--- originally purchased the truck for use outside the state of California.

Mobile transportation equipment (MTE) includes only equipment for use in transporting persons or property for substantial distances. (Reg. 1661(b)(1).) Equipment is considered capable of traveling substantial distances if it is able to travel at highway speeds. (Business Taxes Law Guide Anno. 335.0071 (5/17/78).) I assume the trucks about which you inquire are used to transport cement and are capable of traveling at highway speeds. They are therefore classified as MTE.

A lease of MTE is not a sale or purchase under the Sales and Use Tax Law. (Rev. & Tax. Code §§ 6006(g)(4), 6016(e)(4).) Rather, the lessor is the consumer of the MTE. The sale of MTE in California for the purpose of leasing is subject to sales tax or the purchaser owes use tax on its use of MTE in California. (Rev. & Tax. Code §§ 6051, 6201.) This tax liability is measured by purchase price, or upon timely election, by fair rental value. (Rev & Tax Code §§ 6092.1, 6243.1, Reg. 1661.)

The use of property purchased outside California is subject to use tax if it was purchased for use in California. If such property's first functional use is in California, it is regarded as having been purchased for use in California. (Reg. 1620(b)(3).) Since a lessor of MTE uses the MTE by leasing it, if the lessee first functionally uses the MTE in California, the lessor is regarded as having purchased the MTE for use in California. If the property is first functionally used outside California, prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California. (Id.)

I assume the MTE about which you inquire was purchased outside California, was first functionally used outside California, and was so used for over 90 days before its entry into California. Based on the facts and assumptions set forth herein, the use of the MTE by M--- in California is not subject to sales or use tax. Since the lease of MTE by M--- is considered to be M---' own use, and not a sale or purchase under the Sales and Use Tax Law, the lease of such MTE by M--- in California is also not subject to sales or use tax.

Enclose for your information is a copy of Regulation 1661. If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

DHL:rar

Enclosure