STATE OF CALIFORNIA

335.0084.500

STATE BOARD OF EQUALIZATION
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Executive Director

May 28, 1997

Mr. B--- M---, Manager
H--- I---
XXXXX - XXth --- ---
---, WA XXXXX

Re: Tax Liability on Leased Equipment Brought into California
H--- I--- T--- Inc.
FS -- XX-XXXXXX

Dear Mr. M---:

This is in response to your letter of April 3, 1997 in which you inquired about the application of California's Sales and Use Tax Law to leased vehicles acquired under a lease agreement executed in Seattle Washington.

In your letter you explain that your company, H--- I--- (H---), is a leasing company operating in the state of Washington. Your inquiry focuses on one of your lessee's, D--- T--- D--- S---, Inc. (D--- T--- D---), which is opening a branch in [city], California. (D--- T--- D---) is anticipating transferring 4 vehicles which it leases from you to the [city] facility. You describe the vehicles leased to (D--- T--- D---) as 1995 [model name] 3 axle flatbed trucks. You further explain that all of these trucks have been in lease service in [city, WA] for at least a four month period.

(D--- T--- D---) has been informed by another leasing company that if these trucks are brought into California, they will not be subject to California's sales or use tax. As authority for this statement you cite the response to question 5 on page 18 of the Board of Equalization's Pamphlet 46, entitled "Tax Tips for Leasing of Tangible Personal Property in California." In essence, this response states that lease payments attributable to leases of mobile transportation equipment (MTE), acquired outside of California, will not be subject to either sales or use tax if the MTE was in lease service outside of California for more than 90 days, and if the MTE was not originally purchased for use in California. These vehicles are considered to be MTE under Section 6023 of the Revenue and Taxation Code which includes trucks in the definition of MTE.

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, use tax applies to the use of tangible personal property purchased from a retailer for use in California, unless the use is specifically exempt from tax. (Rev. & Tax. Code §§ 6201, 6401.)

A lease of non-MTE tangible personal property is considered to be a continuing sale unless the property is leased in substantially the same form as acquired and the lessor has paid sales tax reimbursement or has paid use tax measured by the purchase price. (Rev. & Tax. Code § 6006(g)(5), Reg. 1660(b).) When a lease is a sale under this definition, the lessee owes use tax measured by rentals payable, which the lessor must collect and pay to this Board. (Rev. & Tax. Code §§ 6201, 6202, 6203, Reg. 1660(c).)

The application of tax to sales and leases of MTE acquired in California for use in this state is different from leases of other tangible personal property. Unlike the lease of non-MTE tangible personal property, the lease of MTE is not considered to be a continuing sale. (Rev. & Tax. Code § 6006(g)(4), Reg. 1661.) Rather, the lessor of MTE is regarded as the consumer of that MTE. This means that either the sale of the MTE to the lessor is subject to sales tax or the lessor's use of the MTE is subject to use tax. If the lessor does not pay sales tax reimbursement to its vendor, then it owes use tax on its use of the MTE (by leasing) measured by the purchase price unless the lessor makes a timely election to pay use tax liability measured by fair rental value.

Since these leased trucks qualify as MTE, the use tax liability, if any, attributable to the trucks' presence in California would be borne by you as the lessor. From the facts, as stated by you, it does not appear that these trucks were purchased for use in California. To determine if these trucks are subject to California's use tax we must look to Regulation 1620. Subdivision (b)(3) of this regulation provides, in pertinent part:

> "[P]roperty purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. When the property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase....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."

Accordingly, so long as the trucks were purchased outside of California, were first functionally used outside of California, were functionally used in excess of 90 days outside of California, and did not enter this state until 90 days after purchase, their use in California will not be subject to California's sales or use tax. While you have not specifically inquired, it appears that you may have questions regarding Washington state's tax consequences, if any, attributable to the transfer of these trucks to California. Since we are not qualified to advise you on the application of another state's sales and use tax laws, we suggest that you contact your local branch of the Washington Department of Revenue for advice regarding additional tax consequences, if any, attributable to this proposed transfer.

Sincerely,

Patricia Hart Jorgensen
Senior Tax Counsel

PHJ:cl

cc: Out-of-State District Administrator (OH)
--- --- District Administrator (--)