

M e m o r a n d u m

Note: Lessor, not sublessor of MTE owes tax on cost.

335.1005

To: Petitions (CWP)

Date: June 13, 1985

From: Tax Counsel (HLC)

Subject:

Subject taxpayer's petition for redetermination was heard by the Board in San Francisco on May 7, 1985. The Board took the matter under consideration and allowed petitioner 30 days in which to submit further evidence.

Petitioner leased pickup trucks to the United States Forest Service and contended at the preliminary hearing that no tax was due on the rental activity. The basis for petitioner's contention was that leases to the United States are not subject to tax, and that even if leases of mobile transportation equipment to the United States are taxable, these pickup trucks did not constitute mobile transportation equipment. Finally petitioner contended that if tax is due, petitioner should be allowed to pay tax based on rental receipts.

We rejected these contentions. Leases of mobile transportation equipment are used by the lessor under the Sales and Use Tax Law, therefore we are not taxing the use of the equipment by the United States. Pickup trucks meet the Vehicle Code definition of trucks and are specifically included in the definition of mobile transportation equipment in Regulation 1661. Finally tax is due on cost because petitioner did not make a timely election to pay tax measured by rental receipts.

At the hearing before the Board, petitioner stated that the trucks in question had been leased by petitioner from ---, therefore, any tax due was due from ---. Subsequent to the hearing petitioner submitted evidence to support this contention.

We are now of the opinion that --- was the lessor of the mobile transportation equipment and is therefore liable for the tax. Petitioner as sublessor has no tax liability. We now recommend that the petition be granted.

If the Board accepts our recommendation, the following Statement of Board Action is suggested:

Statement of Board Action

The Board found that petitioner was the lessee and sublessor of the mobile transportation equipment in question. The incidence of tax is on the lessor of mobile transportation, therefore petitioner has no liability for any tax due with respect to the transactions. The Board ordered that the petition be granted.

HLC:ba