



STATE BOARD OF EQUALIZATION

(916) 445-5550

June 3, 1989

Re: X-----

Dear X-----,

This is in response to your letter dated May 18, 1989 regarding the application of use tax to leases when a grantor trust is involved.

X----- is registered as a retailer engaged in business in California with the above cited account number. You state that X----- is the trustor and sole beneficiary under a grantor trust. The trust has purchased vehicles, but has used X-----'s "sales tax exemption certification to defer paying sales tax on the purchase of the vehicles, and instead tax on the rentals is being paid." It is unclear whether the certification to which you refer is by valid resale certificates.

You wish to continue using X-----'s account number when the trust purchases vehicles. You also wish to continue paying tax measured by rentals payable rather than paying tax on the purchase price, and you believe that you should be allowed to continue paying tax in this manner on vehicles you have previously purchased in the manner described above.

Discussion

You have not described the vehicles about which you inquire. For purposes of this opinion, I assume they include mobile transportation equipment (MTE) as defined by Revenue and Taxation Code Section 6023 (this includes buses and most trucks) as well as other vehicles which are not MTE.

A lease of non-MTE tangible personal property is a 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).) That lessor is a seller and is required to hold a seller's permit. (Rev. & Tax. Code §§ 6014, 6066.) Assuming the property will be leased without other use, the seller/lessor may purchase the property

extax for resale (lease) by issuing the vendor a resale certificate as described in Regulation 1668.

Unlike the lease of non-MTE tangible personal property, the lease of MTE is not a 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 purchase price unless it makes a timely election to pay its own use tax liability measured by fair rental value. If a person who purchases MTE for the purpose of leasing wishes to pay its use tax liability measured by fair rental value, it may purchase that MTE extax by issuing its vendor a resale certificate for the limited purpose of reporting its use tax liability on this basis. (Rev. & Tax. Code §§ 6092.1, 6094(d), 6243.1, 6244(d).) In order to make a timely election, the lessor must make the election on or before the due date of the return for the period in which the MTE is first leased. When this election is made, use tax must thereafter be paid measured by the fair rental value, whether the MTE is within or without the state, and the election may not be revoked with respect to any MTE as to which it is made. If, on the other hand, the person who leases the MTE does not make the election in a timely manner, that person owes use tax measured by the purchase price of the MTE.

Summarizing the above discussion, the lease of non-MTE tangible personal property is subject to use tax measured by rentals payable unless the lessor has made a timely election to exclude the lease from the definition of a sale by paying sales tax reimbursement to its vendor or timely paying use tax measured by purchase price. When the lease is a sale, the tax measured by rentals payable is a tax on the lessee's use of the tangible personal property. On the other hand, the lessor of MTE is the consumer of that MTE and it is only by virtue of the lessor's timely election to pay its own use tax liability measured by fair rental value that prevents the lessor from owing use tax measured by purchase price.

A trust is a "person" for purposes of California sales and use tax. (Rev. & Tax. Code § 6005.) A person who is selling tangible personal property (this would include a lease which is a sale as defined above) is required to hold a seller's permit or register with the Board as a retailer. (Rev. & Tax. Code §§ 6014, 6066, 6203, 6226.) Thus, when a trust is engaged in the business of leasing tangible personal property in California and does not pay sales tax reimbursement or use tax to its vendors, that trust is required to register with this Board. The trust may not engage in this business under the seller's permit or registration of its sole beneficiary.

As discussed above, person leasing MTE is not "selling" tangible personal property in this state and is not required to hold a seller's permit or register with the Board solely on the basis of leasing MTE. However, in order to make the election to pay its own use tax liability on the lease of MTE based on fair rental value, that lessor must register with this Board. (Rev. & Tax. Code §§ 6092.1, 6093, 6094(d), 6243, 6243.1, 6244(d).) If a trust that leases MTE wishes to pay its use tax liability for the use of the

MTE on the basis of fair rental value, that trust must register with this Board. It may not use the seller's permit or registration of its sole beneficiary to report tax on this basis.

X----- and its trust have not conformed to the requirements of the California Sales and Use Tax Law with respect to the leases. With respect to the trust's leases of non-MTE tangible personal property, the trust did not make a timely election to pay use tax measured by the leased property's purchase price and those leases are therefore sales subject to use tax measured by rentals payable. Since it is the trust that is selling (leasing) that property, it is the trust that must register with this Board and collect use tax from its lessees and pay that tax to this state. The trust may not avoid this by having X----- report and pay the tax. Rather, it must immediately register with its local district office of the Board.

With respect to the trust's leases of MTE, the trust did not make a timely election to pay its use tax liability measured by fair rental value. The trust therefore owes use tax measured by its purchase price of the property. The trust may not pay its use tax liability on leased MTE based on fair rental value for any MTE with respect to which that election is not made on or before the due date of the return of the trust for the period in which the MTE is first leased. If the trust wishes to pay its use tax liability measured by fair rental value on property first leased in the future, it must register with this Board. It may not report its use tax liability on the return of X-----.

Enclosed for your information are copies of Regulations 1660 and 1661. If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

DHL/smt:1414C

Enclosures: Regulation 1660 and 1661

bc: Out-of-State District Administrator
return Review – Ms. Sue Mayhew