

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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October 3, 1988

M--- G. K---
S--- L---
XXXX --- Drive, Suite X
--- ---, CA XXXXX

Re: SR --- XX-XXXXXX

Dear Ms. K---:

This is in response to your letter dated September 6, 1988 regarding the application of the Sales and Use Tax Law to the lease of tangible personal property.

You have enclosed a copy of a lease agreement and ask if its provisions comply with the requirement that the amount of tax collected from lessees be separately stated. This requirement is set forth in Regulation 1686(a) which states:

“IN GENERAL. Each retailer required to collect use tax from purchasers (including lessees) must give a receipt to each purchaser (or lessee) for the amount of the tax collected. The receipt need not be in any particular form but must show the following:

- (1) The name and place of business of the retailer.
- (2) The serial number of the retailer's permit to engage in business as a seller or the retailer's Certificate of Registration – Use Tax.
- (3) The name and address of the purchaser or lessee.
- (4) A description identifying the property sold to the purchaser or leased to the lessee.
- (5) The date on which the property was sold or leased.
- (6) The sale price of the property, or, in the case of rentals, the amount of the rental for the period covered by the invoice.
- (7) The amount of tax collected from the purchaser or lessee.

“For sales transactions, and rental transactions with respect to which use tax applies, an invoice showing the data required above, together with evidence of payment of such invoice, will constitute a receipt.”

A receipt satisfying the requirements of Regulation 1686 must contain the lessor's seller's permit number. The lease form you have furnished us does not contain a location designated for the lessor's seller's permit number. However, the blank designated "lessor" has ample room for you to add the following statement after your name: "Seller's permit number is SR BHA 19-709249." This would satisfy the second requirement listed above. The lease form you furnished us satisfies the other six requirements listed above. We note, however, that the location for the tax is footnoted with the following statement: "Estimate based on current sales/use tax rate." The use tax listed must be the exact amount collected. If the rate changes during the term of the lease, or the amount of tax collected changes for some other reason, you would be required to set this forth in writing to the lessee.

We note that the lease form is not in itself a receipt given to the lessee for the amount of tax collected. Rather, it is equivalent to an invoice which, together with evidence of payment of such invoice, will constitute a receipt. This evidence is evidence held by the lessee and not the lessor. If the lessee pays by check, we would regard the cancelled check as sufficient evidence of payment. If, however, the lessee pays in cash, you would have to provide the lessee evidence of payment, that is, a receipt. That receipt would not have to separately state the tax since that information is set forth in the invoice (lease agreement).

You also ask for confirmation that when a leased auto is totalled or stolen, tax does not apply to the amount the insurance company pays to reimburse you for your loss. You also note that the insurance company sometimes only makes a partial payoff on the totaled car and you ask whether tax applies to the amount paid by the lessee for the remainder.

The tax on a lease of tangible personal property is a use tax on the lessee which the lessor is required to collect and pay to the state. (Reg. 1660.) The rentals subject to tax include any payments required by the lease. When a vehicle under lease is completely destroyed in a collision or stolen during the term of the lease, use tax applies only to rentals payable for periods up to the date of the loss. All other payments by the lessee due under the lease contract are not taxable because those payments are indemnity payments for the loss of the vehicle rather than rental payments. (Business taxes Law Guide Annotation 330.3340 (1/27/70).) Therefore, neither amounts paid by the insurance company nor amounts paid by the lessee for the loss of the vehicle are subject to use tax.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

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