STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 322-3684

August 17, 1977

R--- T--- L--- Inc.
P. O. Box XXXX
---, Colorado XXXXX

Attention: Mr. J. W. R---

SA OH XX XXXXXX
SS OH XX XXXXXX
R--- T--- L---

SA OH XX XXXXXX
A--- T--- L---

Gentlemen:

We have completed our further review of the petitions for redetermination for the above-listed accounts. The following is a summary of our additional conclusions and recommendations:

R--- T--- L---, Inc.
SA OH XX XXXXXX

The evidence presented supports your contention that the --- Trailers were leased from N--- A--- C--- C--- and not acquired outright from the S--- Corporation. These purchases will be deleted from the measure of tax proposed for redetermination.

The additional evidence provided also warrants a finding that the 46 vehicles purchased in Portland, Oregon, and assigned to the special commodities division were dispatched to California to pick up specific loads and were thereafter used continuously in interstate commerce. These purchases will likewise be deleted from the measure of tax.

It is our conclusion that an exemption should not be granted for the eight vehicles assigned to the general commodities division. The evidence supports your contention that these vehicles were sent to California for use in the company's transportation operations. However, it is our view that the mere transportation of property to the point where they are first placed in service does not amount to a functional use of the property in interstate commerce. Since the first functional

use of each unit occurred within the State of California, the tax is applicable under authority of American Airlines v. State Board of Equalization, 216 Cal.App. 2d 799; also see Southern Pacific Company v. Gallagher, 306 U.S. 167.

R--- T--- L---, Inc.
SS OH XX XXXXXX

We have concluded that the proposed adjustment for tires, batteries, etc. be recognized to the extent of 50 percent.

The claimed reduction is not wholly documented, and the auditor's report indicates that the records at the ---, Wyoming distribution center were meager and not subject to complete accountability. Additionally, the staff's determination is somewhat supported by the fact that amounts reported for the third quarter of 1974 increased by 311 percent over amounts estimated and declared for the prior quarterly period. All amounts were reported on an estimated basis.

Specifically, we have recommended that the state tax measure for this item for the periods listed in your letter of May 27, 1977, be reduced from $96,480 to $54,849, and that the local tax measure for these periods be reduced from $48,166 to $27,383.

A--- T--- L---
SN OH XX XXXXXX

It is our conclusion that the provisions of Revenue and Taxation Code Section 6388, or other provisions of the Sales and Use Tax Law do not operate to provide an exemption for purchases made in the circumstances presented here. The provisions of Section 6388 not only require a delivery by the manufacturer to the purchaser in this state, but also require that the movement be from "the manufacturer's place of business within this state". The clear import of the exemption, which we are required to strictly construe and limit to its precise terms, is to grant the exemption only where the delivery was made by the manufacturer at his place of business in California. Where the delivery is made by the manufacturer from sources without the state, the requirements for exemption are not present.

It is our conclusion that Units 6316, 6313, 6315, 6384, and 6382, as listed in your letter of May 27, are not exempt from tax as property not acquired for use in California. As we pointed out at the conference, the purpose of the "principal use" test is to determine by an objective use standard whether the property was actually purchased for use in California (see discussion in Western Pacific Railroad Co. v. State Board of Equalization, 213 Cal.App.2d 201).

It is not sufficient to merely count the intrastate use and to exclude interstate use 'within the state. This would amount to a test based solely upon "the character of the use", which is irrelevant to a determination of the location of principal use.

To summarize, the vehicles were each properly classified as property purchased for use in this state because more than one-half of the use for the test period was within this state. The use of the property in this state is not exempt under the Commerce Clause of the United States Constitution because the use made in California was not "continuously" in interstate commerce (see Sales and Use Taxes Regulation 1620, paragraph (b) (1)).

A reaudit adjustment will be allowed for Units 6383, 7982, and 7985.

In due course you will receive a copy of the reaudit report which will reflect the adjustments indicated. In the interim, we shall be pleased to consider any questions you may have about our conclusions or the further action to be taken on these petitioned matters.

Very truly yours,

W. E. Burkett
Tax Counsel

WEB/vs

bc: Out-of-State - Auditing:

Please initiate the further reaudit adjustments.

We have concluded that no basis exists for asserting use tax against North American Car Corporation in the circumstances presented.