STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
TELEPHONE (916) 324 - 3828

WILLIAM M. BENNETT
First District, Kentfield

Conway H. Collis
Second District, Los Angeles

ERNEST J. DRONENBURG, JR
Third District, San Diego

Paul CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

CINDY RAMBO
Executive Director

August 15, 1990

Mr. J--- R. W---
Assistant Controller
M--- C--- Corporation
XXX --- X, Suite XXX
---, CT XXXXX-XXXX

Dear Mr. W---:

This is in reply to your letter of August 2, 1990 requesting our opinion as to the availability of a credit or deduction for sales or use tax paid to another state. The facts as stated in your letter are as follows:

"Facts:

"The company is in the business of leasing motor vehicles throughout the United States. In states such as Arkansas, Iowa, Maine, New York, Montana, North and South Dakota, Texas, Vermont, Virginia, Illinois, New Jersey, and North Carolina, the law provides that the sales tax or a motor vehicle excise tax in lieu of a sales tax must be paid upfront at the inception of the lease, or upon registration of the vehicle. The tax is based on the total rental payments in the contract or on the acquisition cost of the vehicle. Examples of how the tax applies include the following:

"Example (1): Texas Sales and Use Tax Provisions 34 TAC Sec. 3.79(a) Motor Vehicle Lease and Sales. Motor Vehicles which are purchased by a lessor to be leased are subject to motor vehicle sales and use tax based upon the purchase price of the motor vehicle to the lessor. Such tax is due from the lessor at the time of purchase. Subsequent lease payments are not subject to the tax.

"Example (2): New Jersey Sales and Use Tax Law. A lessor may elect to pay tax on either (1) the purchase price of the property, or (2) the total of the lease payments attributable to the leased property. The tax is due at the time of the lease and the lessor is considered the end user and is responsible for payment of the sales tax.

> "Where a lessee relocates the situs of the vehicle during a lease period from one of the states in which an upfront payment has been made to your state additional taxes would be payable when rents are paid unless a credit or deduction is permitted for the taxes previously paid. We wish to confirm that a credit is permitted under the above circumstances, up to the amount of taxes previously paid. We believe that your state's provisions allow a full credit for taxes paid to other states if that other state's tax rate equals or exceeds your state's sales tax rate. If the upfront state tax rate is lower, it appears that the rentals would be subject to the difference in tax rates. Should an allocation formula be required for the taxes paid to the other state, please advise us of the method or formula to be applied."

The section of the California Revenue and Taxation Code (all code references hereinafter are to such code) relevant to your question is Section 6406, which states as follows:

> "Credit for tax paid to another jurisdiction. A credit shall be allowed against, but shall not exceed, the taxes imposed on any person by Chapter 3 (commencing with Section 6201) of this part, by any ordinance enacted pursuant to Part 1.5 (commencing with Section 7200), by any ordinance enacted pursuant to Part 1.6 (commencing with Section 7251), and by any ordinance enacted pursuant to Article 2 (commencing with Sec\ion 37021) of Part 17 of this division by reason of the storage, use, or other consumption of tangible personal property in this state to the extent that the person has paid a retail sales or use tax, or reimbursement therefor, imposed with respect to that property by any other state, political subdivision thereof, or the District of Columbia prior to the storage, use, or other consumption of that property in this state. The credit shall be apportioned to the taxes against which it is allowed in proportion to the amounts of those taxes.
>
> "A credit, otherwise permitted by the foregoing provisions of this section, shall not be allowed against taxes which are measured by periodic payments made under a lease, to the extent that the taxes imposed by any other state, political subdivision thereof, or the District of Columbia were also measured by periodic payments made under a lease for a period prior to the storage, use, or other consumption of the property in this state."

Also relevant herein is Section 6010(e)(5) which defines a "purchase" to include any lease of tangible personal property if the lessor has not paid California sales tax reimbursement or use tax. When a lease is a "purchase", the California tax is measured by the rentals payable for the period in which the tangible personal property is in California. Generally, the applicable tax is a use tax upon the use in California by the lessee. The lessor, M--- in this case, must collect the use tax from the lessee at the time the rentals are paid and pay such tax to this Board (see Regulation 1660(e), copy enclosed). Therefore, we agree with your conclusion that M--- must collect and pay to this Board use tax on rentals for periods during which M--- lessees have vehicles in California under the above-stated facts.

We disagree with your conclusion that a credit is allowable against the California use tax for "upfront" taxes of other states imposed on and paid by M---. The above-quoted Section 6406 only allows credit when both taxes, that is the California use tax and the other states' tax, are imposed on the same "person". The California use tax on rentals is imposed on the lessee; the other states' "upfront" tax under statutes such as the above-quoted Texas and New Jersey taxes, are imposed on M--- as lessor. Since each tax falls on a different person, no credit within Section 6406 is allowable.

This result is not changed because of M--- having the duty to collect and report the California use tax since such use tax is nevertheless imposed on the lessee. Therefore, no credit against the California use tax on the lessee is allowable for the other states' taxes imposed on and paid by M---.

The only situation in which a section 6406 credit would be available versus the California use tax on the lessee would be as summarized in Business Taxes Law Guide Annotation 570.1660, which reads as follows:

> "Lessee. A lessee who leases equipment from a Nevada dealer and who brings the equipment into California for use in California must pay 5 percent tax measured by the rental price of the equipment, unless the lessor of the equipment has paid California sales tax reimbursement or use tax with respect to the property. A credit will be allowed against the California tax only if the lessee himself pays to the lessor, or to Nevada, the Nevada sales tax or use tax or sales or use tax reimbursement for the periods that the equipment is present in California. 7/17/69."

Such annotation assumes that the lessor has elected to pay the Nevada tax on a rental receipts basis, rather than "upfront", and is collecting Nevada tax reimbursement from its lessee. If Nevada required that the lessor pay tax on rental receipts while the vehicle is outside Nevada and is, in fact, located in California, then a section 6406 credit is allowable. In a little plainer language, a credit would be allowed only if the lessee pays to M---, or directly to the other state, the other state's sales tax or use tax, or sales or use tax reimbursement, <u>for the periods that the vehicle is in California</u>. This follows from the last sentence of Section 6406 quoted above, which disallows any credit for other state's taxes for <u>periods prior</u> to the vehicle being in California.

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

Sincerely,

Donald J. Hennessy
Senior Tax Counsel

DJH:jb