



STATE BOARD OF EQUALIZATION

July 17, 1969

P--- E--- Company
P. O. Box XX
---, NV XXXXX

Attention: Mr. --- L--- H---
Bookkeeper

SC -- XX-XXXXXX

Gentlemen:

Your letter of March 5, 1969, has been directed to this office for reply. Please excuse our delay in responding; however, your inquiry has raised several technical questions which have required some study. You state, "Materials purchased and picked up in Nevada, but used in California, are subject to 5% Sales Tax. 2% is forwarded to California, and 3% is sent to Nevada (Line 23 on the California Report provides for this)." You ask, "Does this apply to equipment on rental when used in California exclusively over a period of several months? The equipment usually is picked up here in Nevada and signed for, but used only in California."

The California Sales and Use Tax Law provides that a tax is imposed on the use in this state of tangible personal property purchased from any retailer for use in this state. The tax is measured by the sales price of the property (section 6201). "Purchase" is defined to include any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except, amongst others, a lease of tangible personal property leased in substantially the same form as acquired by the lessor as to which the lessor has paid California sales tax reimbursement or California use tax measured by the purchase price of the property (section 6010(e)(5)). "Sales price" means the amount for which tangible personal property is leased or rented (section 6011). The possession of tangible personal property by a lessee is a continuing purchase for use in this state by the lessee as respects any period of time the leased property is in this state, irrespective of time or place of delivery of the property to the lessee (section 6010.1). Thus a lessee who leases equipment from a Nevada dealer and who brings the equipment into this state for use here must pay 5 percent California 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.

If the lessor purchased the equipment for use in California, that is, if at the time he purchased the equipment the lessor intended to use the equipment in this state himself or to lease it to others for use in this state, then he was required either to pay use tax to this state at the time the property was first used here, as measured by the purchase price to him of the equipment or, if the property were leased here, to collect, if he had so elected, use tax from his lessee. If the lessor has paid or collected this tax or paid this reimbursement, then his leasing the equipment in this state will give rise to no additional tax liability at all.

Assuming that you have not paid California sales tax reimbursement or California use tax on the equipment which you lease for use in this state, you may be required to collect a full 5 percent tax from your lessees for remission to this state. The provision of the California Sales and Use Tax Law which allows a credit for tax paid to another jurisdiction provides only that:

“A credit shall be allowed against...the taxes imposed on any person [by the California law] to the extent that the person has paid a retail sales or use tax, or reimbursement therefore, imposed with respect to that property [by another state]. [This] credit ... shall not be allowed against taxes which are measured by periodic payments made under a lease, to the extent that the taxes imposed by [the other state] 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.”
[Rev. & Tax. Code, section 6406, emphasis added.]

In a little plainer language, this means that we will allow a credit on line 23 only if the lessee himself pays to you, or the State of Nevada, Nevada sales tax or use tax or sales or use tax reimbursement for the periods that the equipment is present in this state.

Although we cannot definitively interpret Nevada law, we understand that your lessees may or may not have to pay Nevada tax or tax reimbursement depending upon facts not stated in your letter. Section 372.385 of the Nevada Sales and Use Tax Act provides that, “for the purposes of the sales tax, gross receipts from rentals or leases of tangible personal property shall be reported and the tax paid in accordance with such rules and regulations as the Tax Commission may prescribe.”

Nevada ruling 61 provides that, “(2) A person [the lessor] purchasing property in this state for lease or rental in this state may (a) pay the sales tax to his vendor on the sales price of this property, or, (b) give the seller a resale certificate for the property and elect to pay the tax measured by the gross receipts from leases or rentals in this state.”

Paragraph (4) of ruling 61 provides that, “If tax is paid on the cost of the property, no further tax is due and tax shall not be collected from the customer on the lease or rental price” but that “If the renter or lessor elects to measure the tax by his lease or rental receipts, he may seek reimbursement for the tax from his customer measured by the lease or rental price.”

If you have paid the sales tax to your vendor, it appears that your lessees could not be required to pay Nevada tax or tax reimbursement as a result of their leasing the equipment in question from you. Accordingly, under these circumstances, the lessees would have to pay the full 5 percent California tax and you would be required to collect the tax for this state at the time the rental payments were made by the lessee under the lease.

Your letter suggests, however, that you have elected to pay Nevada tax on your rental receipts and that you are collecting Nevada tax reimbursement from your customers. If Nevada requires that you pay tax on rental receipts while the leased equipment is outside that state and is, in fact, located in California, then your lessees may take a credit for the reimbursement paid by them to you, and you may follow the same procedure in reporting tax on leases as you follow in reporting tax on ordinary sales.

For further assistance in this matter, we suggest that you contact our office located at 211 Broad Street, Nevada City, 95959, telephone (916) 265-4628.

Very truly yours,

T. P. Putnam
Tax Counsel

By _____
Gary J. Jugum

GJJ:kc

cc: Marysville – District Administrator