

1 rebate process. The rebate documents designate claimant's customer as the host customer and
2 claimant as the applicant, system owner, and payee.² The lease agreement indicates that any and all
3 renewable energy credits, utility rebates, and other such credits are the property of and accrue only to
4 claimant, to be used solely at claimant's sole discretion. It further indicates that claimant's customer
5 agrees to cooperate with claimant in order for claimant to be able to claim such benefits, including the
6 filing of applications for rebates and assigning of the proceeds of such rebates to claimant. The
7 Department determined that the rebates constituted taxable gross receipts because these payments,
8 which the CSI paid for the benefit of claimant's customers in order to encourage the installation and
9 use of solar energy systems, were assigned to claimant as part of the lease agreement.

10 Claimant contends that the rebates do not constitute taxable gross receipts, arguing that the
11 rebates were incentive payments for taxpayers such as itself to enable the reduction in cost of installing
12 solar systems and were completely unrelated to what claimant charged its lessee customers.³ Claimant
13 asserts that both the CSI Handbook and the California Public Utilities Code indicate that the rebates
14 are made to the owners of the solar systems, and claimant refers to various sections of the CSI
15 Handbook. Claimant also cites to Business Taxes Law Guide (BTLG) annotation 330.3620
16 (12/20/1968), which states that, where a leasing company receives rebates from automobile
17 manufacturers because of the company's purchase of vehicles for placement in lease service, and
18 retains the rebates for its own use, the rebates are not taxable income and instead constitute reductions
19 in the company's cost of acquiring the lease vehicles. In brief, claimant asserts that the rebates at issue
20 did not result in its collection of additional revenue from the lease of the solar system (because the CSI
21 rebate program did not require a reduction of the lease price based on the rebates), claimant did not
22 reduce the lease price based on the rebates, and the rebates were used only to reduce its installation
23 costs. On that basis, claimant argues that the rebates were not taxable gross receipts.

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26 ² According to the July 2009 CPUC California Solar Initiative Program Handbook (CSI Handbook) at section 2.1.1, a "host
27 customer," in most cases, will be the utility customer of record at the location where the generating equipment will be
28 owner. The "applicant" is the entity that completes and submits the CSI program application.

³ Claimant states that its lease prices are based on "what the market will bear," with a goal of setting lease charges at
amounts lower than the customer would pay to a utility company.

1 Claimant's lease agreements contain a provision whereby the customer agrees that the rebates
2 are claimant's property and accrue only to claimant, and that the customer will cooperate with claimant
3 in order for claimant to be able to claim the rebates, including the assigning of the proceeds of the
4 rebates to the claimant. This provision demonstrates that claimant's customers, and not claimant, were
5 entitled to the rebates and that claimant's receipt of these rebates was contingent on claimant's
6 customers' assignment of their right to the rebates to claimant. It would be unnecessary if, as claimant
7 contends, claimant (as the system owner) were the only party entitled to receive the rebate. Thus, since
8 the rebates paid to claimant were third-party payments required by the lease agreement, they were part
9 of claimant's lease receipts and therefore part of claimant's taxable gross receipts, pursuant to
10 California Code of Regulations, title 18, section 1660, subdivision (c)(1).⁴

11 Claimant's assertion that the rebates it received were unrelated to the lease prices charged to
12 customers is not relevant because claimant received the rebates pursuant to its customers' contractual
13 obligations to assign the rebates to claimant. As for claimant's references to various sections of the
14 CSI Handbook, we find that those sections do not indicate that the rebates are made only to system
15 owners, as claimant asserts. Instead, the sections provide that the rebate payments will be made to the
16 host customer or a third party as indicated in the claim form. Similarly, the Public Utilities Code does
17 not support claimant's contention that it, as the system owner, was the only party entitled to the rebate.
18 In relevant part, section 2854 of the Public Utilities Code indicates that the purpose of monetary
19 incentives is to offset part or all of the *consumer's* electricity demand. Further, we find that
20 petitioner's reliance on BTLG annotation 330.3620 is misplaced. The facts on which the annotation is
21 based are readily distinguished from the facts herein because the leasing company referred to in the
22 annotation purchased the vehicles from the manufacturer who provided rebates. Here, claimant did not
23 purchase anything from the California Public Utilities Commission or the CSI and thus did not incur a
24 cost related to such a purchase which would be decreased by the rebate amount. Accordingly, we find
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26 ⁴ We note that California Code of Regulations, title 18, section (Regulation) 1671.1, relates to rebates, but is not applicable
27 here because it only applies to retailers who receive rebates from third parties *pursuant to a contract* requiring a specific
28 reduction in the selling price of tangible personal property. (Cal. Code Regs., tit. 18, § 1671.1, subd. (c)(3)(A).) Here,
there is no evidence or assertion of any contract between claimant and CSI, and therefore Regulation 1671.1 does not apply
to the facts of this case, nor to the types of rebates at issue herein.

1 that the rebates CSI paid to claimant, which had been assigned by claimant's customers to claimant,
2 are gross receipts subject to tax.

3 **OTHER MATTERS**

4 None.

5 Summary prepared by Lisa Burke, Business Taxes Specialist III

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