

236.0000 FILING SALES AND USE TAX RETURNS

236.0010 Authorized Signature. Section 6452(b) prescribes the requirements for filing sales and use tax returns. To comply with this requirement, sales and use tax returns must be signed by one of the following:

- a. The owner of the business, in the case of a sole proprietorship.
- b. A responsible corporate officer, in the case of a corporation.
- c. A general partner, in the case of a partnership.

In any of these cases the person required to sign the return may also give written authorization to another person, including an employee or independent accountant, to sign the return. 6/8/90.

236.0475 Lessor Required to File Returns. Lessor rents small pick-up trucks and cargo vans to customers of a retailer of other property (retailer) for short terms, generally three hours or less. The lessor has no rental locations other than the retailer's location. The vehicles are not mobile transportation equipment. The vehicles are rented by the customers at the retailer's service counters. The retailer's employees handle all facets of the rental arrangements, processing all paperwork and checking the vehicle in and out. The vehicle rental agreement between the lessor and the individual customer explicitly provides that the retailer is not a party to contract and accepts no responsibility or liability under the contract. The retailer collects the rental amounts on behalf of the lessor, and also adds and collects California use tax from the customers on the rental receipts. The transactions are recorded on the retailer's point of sales computer system, which tracks revenue and use tax collected. The contract between the retailer and the lessor requires the retailer to remit to the lessor the net proceeds from the rental agreements, less the use taxes collected and an agreed fee payable by the lessor to the retailer. The contract also states that the retailer assumes responsibility for the remittance of collected use tax to the governmental authorities.

A review of the actual contracts might indicate that the lessor was actually leasing the vehicles to the retailer for sublease to its customers. Assuming such is not the case and the lessor is leasing the vehicles to the retailer's customer, the lessor is required to report and remit to the Board the tax due on the rentals payable by the lessees. That is, the retailer may not report the tax on its returns. Instead, the tax must be reported on separate returns filed by the lessor. Of course, the lessor may authorize the retailer to act as its agent to prepare, sign, and file the returns on the lessor's behalf. Even if it does so, the retailer may not combine that return with its own return, but must file a separate return under the lessor's name. 1/29/97.

236.1010 Sale of Assets. A corporation engaged in the retail sale of computers and related items sold all of its business assets effective May 31, 1987, but failed to report or pay tax on the sale of assets. The corporation objects to the application of tax on the basis that the purchaser filed under Chapter 11 of the Bankruptcy Act on January 11, 1989, making it doubtful whether all of the consideration due under the contract of sale will be received.

Tax on the sale of the assets should have been reported and paid with the corporation's return which was due on or before July 31, 1987. This means that

payment of the tax should have been made before the purchaser filed for protection under Chapter 11. The corporation is entitled to relief only after the amount claimed as a bad debt is written off for income tax purposes. When the corporation writes off any amount as a loss on this transaction, the corporation will be entitled to a credit or refund at the time the write-off is made. 5/18/90.