

330,2307.800

Reg. 1660
A scale model of a truck tractor is not mobile transportation equipment. Lessor control over property discussed.

915/445-2242

May 7, 1985

Re:

Your letter of February 29, 1986, addressed to Mr. Don Hennessy, has been referred to me for a response. You write to us on behalf of your client, _____, requesting a legal ruling as to whether a scale model of the Peterbilt truck tractor constitutes mobile transportation equipment, as defined in section 6023 of the Revenue and Taxation Code. Your letter provided us with the following facts:

"The Truck is a hand-built 3/4 scale model working replica of a Peterbilt truck tractor. _____ believes that the Truck is one of a kind. The Truck's overall length, bumper to bumper, is 17 feet 10 inches. The outside width of the bumper is 6 feet, the height from the top of the cab to the ground is 6 feet 2 inches, and the unladen weight is 8,870 pounds. Photographs of the Truck are enclosed.

_____ acquired the Truck in an exempt transaction on December 20, 1985. A certificate of motor vehicle use tax exemption was issued to _____ by the Board on December 18, 1985. A copy is enclosed. Also, since _____ will use the Truck solely in its leasing business, _____ issued a resale certificate upon purchase. On December 30, 1985, _____ titled the Truck with the DMV and obtained a commercial trip permit

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(power). Copies of the title document and commercial trip permit receipt are enclosed.

_____ will lease the truck to businesses for their use for promotional and advertising purposes, beginning in the first quarter of 1986. The leases made by _____ will typically range from one day to several days in length.

_____ will supply its own personnel to operate the Truck when leased for promotional purposes. _____ anticipates that the lessees will use the Truck in conjunction with print-media and television advertisements. The Truck will never be used to transport property as would a normal, full-size truck tractor. The Truck is unique, hand-built, and valuable only as a scale model truck tractor. When it is moved from one location to another, it will not be driven on the highway, but will be transported in a covered trailer."

Analysis

The question that you have presented for our review is whether or not the business activities engaged in by your client constitutes the leasing of mobile transportation equipment, as defined by section 6006 (g)(4) and section 6010 (e)(4) of the Revenue and Taxation Code. Section 6006 and 6010 exclude from the definition of "sale" and "purchase" those leases of mobile transportation equipment for use in transportation of persons or property (Reg. 1661).

"Mobile transportation equipment", as defined in Revenue and Taxation Code Section 6023, includes trucks (except "one-way rental trucks"), truck tractors, and truck trailers. However, Regulation 1661(b) limits the definition of "mobile transportation equipment" to include only equipment for use in transporting persons or property for substantial distances. You state in your letter that the Truck will never be driven for substantial distances. The Truck will be hauled, via a covered trailer, from one location to the next. As a scaled down model of a Peterbilt truck, the Truck is not designed to carry persons or property for substantial distances. Hence, we concur with your opinion that the Truck does not constitute mobile transportation equipment.

The question of whether the business activities of your client constitutes a leasing transaction turns upon whether possession and control of the Truck has been relinquished to the "lessee." The leading case in this area of the law, Entremont v. Whitsell, (1939) 13 Cal.2d 290, held that where a driver was furnished to operate a truck, the owner did not relinquish the requisite control over the truck which is required for an activity to be considered a lease. The court in determining that the purported lease agreement was in fact a service contract looked to the equipment owner maintaining and supplying the fuel, the owner carrying the operator on his employment records and payroll, and the equipment owner assuming responsibility for damage to or caused by the operation of the machinery (California Attorney General Opinions No. 59-151, February 12, 1960).

Another factor of some importance used in ascertaining whether the owner has relinquished control of the truck is whether the "lessee" has the authority to discharge the operator. In the case of Service Tank Lines v. Johnson, (1943) 61 Cal.App.2d 67, the court held that there was no lease where a truck owner supplied trucks with operators and agreed to replace any unsatisfactory operators. Hence, case law strongly supports the argument that where the owner of the truck exercises control over the details of operating the truck there is no lease.

The information provided in your letter states that will supply its own personnel to operate the Truck when it is leased for promotional purposes. You further informed us by telephone that the Truck will only be operated by s employees to move the Truck from the trailer in which it is hauled, to the spot where the lessee intends to display the Truck. The facts in your client's case may be distinguished from those in Entremont. In Entremont the purpose of the lease was to have trucks to transport road building materials. The driving of the trucks was a critical element of that lease. In the facts at hand, your client will be leasing the Truck for promotional purposes that does not necessitate the driving or operation of the Truck. The Truck will only be driven by s employee for the purpose of delivering the Truck to the exact location the lessee desires. The lessee will then have possession and control over the stationary truck. Where merely delivers the Truck, possession and control are relinquished to the lessee and a lease exists.

The lease of tangible personal property in this state is generally subject to a use tax measured by the rental receipts (Reg. 1660(c)). The lessor

must collect the use tax from the lessee at the time rentals are paid. Assuming that when you state in your letter that the truck was purchased in an exempt transaction you are referring to [redacted] s issuing a resale certificate, your client may elect to pay tax based upon the purchase price of the Truck if the Truck will be leased in substantially the same form it was acquired. If your client wishes to exercise this election they must report and pay this tax with the return for the period in which the truck is first leased (Reg. 1660 (c)(2)). If this election is not timely made, [redacted] will be required to collect tax measured by rental receipts.

If the Truck was in fact purchased in an exempt transaction, other than an occasional sale, then your client will be required to pay tax measured by rental receipts. If the Truck was purchased in an exempt transaction defined as an occasional sale, your client may exercise the election to pay use tax on the purchase price (Reg. 1660 (c)(4)).

If the facts were such that employee's of [redacted] were required to drive the Truck as part of the promotion (i.e. driving the Truck to film a commercial) then no lease would be deemed to occur since [redacted] would never relinquish control of the Truck. This in effect would constitute a use by [redacted] if the Truck is first leased by Leisure and then "used" by [redacted] tax will be owed based upon the purchase price of the Truck (Regulation 1660 (c)(6)). Any subsequent leases would be subject to tax on rental receipts with a credit allowed for tax paid on the purchase price.

If you have any questions concerning the information contained in this letter, please contact us again.

Sincerely yours,


Teresa Armstrong
Legal Counsel

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