

(916) 445-5550

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July 3, 1991

This is in response to your letter dated May 6, 1991. You lease automobiles and collect use tax measured by the rentals payable from those leases. Your lessees occasionally inform you that they have moved from one county to another. You ask whether the tax rate should be changed based on a verbal notification of the move or if you are notified in writing. You also ask whether you need some type of affidavit before changing the tax rate. For purposes of this opinion, I assume that your lessees are individuals (as opposed to fleet operations).

As you know, the minimum combined sales and use tax rate in California is six percent. Currently, any percentage above that six percent would be imposed by districts pursuant to the Transactions and Use Tax Law. (Rev. & Tax. Code § 7251, et seq.) It is this additional transactions tax about which you inquire.

The tax on the lease of tangible personal property is a use tax which the lessor is required to collect from the lessee and pay to the state. (Reg. 1660.) Thus, any applicable transactions tax would also be a use tax and would be determined based on the district in which the leased property is used. (Reg. 1823.) We recognize that it may be difficult to ascertain where leased property is used. Therefore, in the absence of evidence to the contrary, it is presumed that the use of property by the lessee occurs in the taxing district in which the lessor delivers the property, or the district to which the property is shipped via common carrier to the lessee. (Reg. 1823(c).)

July 3, 1991

In the case of a leased motor vehicle, there generally is evidence related to the county of use which overcomes the presumption referred to above. That is, the vehicle is required to be registered to be driven on the streets of California and that registration would show an address which would generally be the address from which the vehicle is principally used. In the absence of evidence to the contrary, it is therefore presumed that the vehicle is used in the district indicated by the address shown on the registration.

If your lessee notifies you in writing that the location at which the vehicle will be located is different from that shown on the registration, that written notification would be documentation indicating the district of use of the vehicle. However, that notification must include a valid explanation for this discrepancy in order to overcome the presumption that the registration address is the address of use. In this context, I note that the lessee's change of address would generally necessitate a change in the address shown on the registration. If not, the lessee must explain. Otherwise, we would again regard the registration address as controlling. Please note that the evidence you use to show that the place of use is other than the address shown on the registration must be uniform. That is, when applicable, the same type of evidence used to show that the place of use is one with a lower tax rate than the registration address must also be used to show that the place of use is one with a higher tax rate than the registration address.

You also ask whether the documents required to show a change of location of use would be different if the lessee moves outside California versus a move from one county to another inside California. When the lessor does not pay sales tax reimbursement or use tax on purchase price, the lease of tangible personal property which does not constitute mobile transportation equipment under Revenue and Taxation Code section 6023 and Regulation 1661 is a continuing sale. It is subject to use tax when the property is inside California. It is not subject to California's sales or use tax when the property is located outside California. Thus, if your lessee removes the vehicle from California and uses it solely outside California, no California sales or use tax applies. However, similar to the discussion above, if the registration continues to show the lessee at the California address, you would have the burden of showing that the vehicle was actually used only outside California since the presumption is that the California address on the registration means that the property continues to be used in California.

July 3, 1991

It seems likely that as the lessor, you would have the power to require your lessee to properly register the vehicle in the state of its use. If you are unable to do this, you should either collect use tax measured by rentals payable or should obtain from the lessee and retain, a valid explanation in writing for the discrepancy between the registration address and the address of the vehicle's use outside California.

If you have further question, feel free to write again.

Sincerely,

David M. Levine
Senior Tax Counsel

DHL:cl

bc: Mr. Allan K. Stuckey
San Francisco District Administrator