



330.5065

§596 REVIEW REQUIRED

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-2608

REFERENCE: 1660, 6010.65
APPROVED: *[Signature]*
12-11-93

MEMBER
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Fourth District, Los Angeles
GRAY DAVIS
Controller, Sacramento
BURTON W. OLIVER
Executive Director

January 12, 1994

Dear ..

Re:

This is in response to your letter dated November 24, 1993, in which you ask whether your transfer of property comes within the provisions of section 6010.65 of the Revenue and Taxation Code. You state:

"We are seeking confirmation of whether a subsequent sale of a lease and transfer of title to tangible personal property following a sale and leaseback would be subject to California sales and use tax. The transaction would be structured as a sale to
1) and
leaseback where there would be a sale by a person and a leaseback to that person of tangible personal property where (1) that person has paid sales tax or use tax with respect to that person's purchase of the property, and (2) the acquisition sale and leaseback is consummated within 90 days of the person's first functional use of the property. The portions of the transactions described should be exempt from any additional tax pursuant to Section 6010.65 of the Revenue and Tax Code.

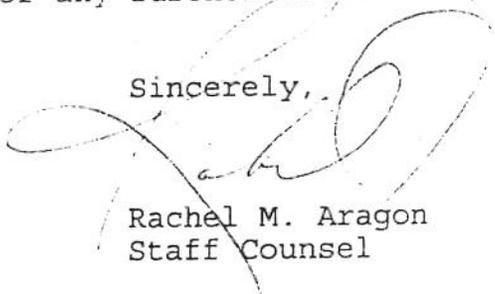
"It is ..'s desire, as lessor in the sales and leaseback arrangement, to thereafter sell Capital's interest in the property (including an assignment of the lease contract, together with transfer of title to tangible personal property) to a third party investor. This would occur within the original 90 days window of the party's first functional use."

January 12, 1994

Under the specific facts quoted above, we conclude that the Transfer comes within the provisions of section 6010.65 and would be classified as neither a sale nor a purchase under the Sales and Use Tax Law. Of course, as you recognize, if the Transfer occurs more than 90 days from the lessee's first functional use of the property, or if the lessee had not paid tax or tax reimbursement with respect to its purchase of the property, the Transfer would constitute a sale and a purchase. (See Reg. 1660(c)(9) copy attached.)

If we can be of any further assistance, please feel free to write again.

Sincerely,



Rachel M. Aragon
Staff Counsel

RMA:jlh

Attachment