

**STATE BOARD OF EQUALIZATION**

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March 16, 1995

BURTON W. OLIVER
Executive Director

Mr. D--- D---
XXXX South --- Drive
---, CA XXXXX

Re: T--- M--- C--- Corporation
SY -- XX-XXXXXX

Dear Mr. D---:

This is in response to your letter dated December 29, 1994 regarding the application of tax to your lease of a vehicle in California.

You entered into a lease of a vehicle in Texas. You thereafter moved to California, bringing the vehicle with you. You then received a new lease statement which reflected an increase in your rental payment of \$53.90. When you inquired the reason for the increase, the lessor, T--- M--- C--- Corporation, advised you that the increase was for California tax on the lease. You enclosed a copy of your lease contract and state that it reflects a rental tax that you paid to Texas in the amount of \$3,147.38. You ask whether you must pay tax to California.

As relevant here, leases of tangible personal property in California are continuing sales with respect to any period in which the property is in California unless the lessor has paid California sales tax reimbursement or use tax measured by purchase price. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1 (the property must also be leased in substantially the same form as acquired).) When a lease is a continuing sale, the lessee owes use tax measured by the rentals payable. (Reg. 1660.) The lessor must collect that tax from the lessee and remit it to the state, and must give a receipt to the lessee showing the amount of tax collected. (Reg. 1686.)

Here, the lessor did not pay California sales tax reimbursement or use tax. Therefore, its lease of the vehicle to you is a taxable continuing sale with respect to any period in which the vehicle is in California.

You note your concern regarding the tax paid to Texas. You state that you paid tax to Texas in the amount of \$3,147.38. However, the lease contract you provided actually states that the amount in question, included on the lease contract as item 9b, is an estimate of taxes that you will pay during the term of the lease. Furthermore, it indicates that such amount is calculated with the formula "4b x 6 + 3c." (Item 3c is Sales/Excise/Use Tax due at lease inception. Item 4b is Sales, Use or Rental Tax due on the monthly lease payment. Item 6 is the lease term.) Items 4b and 3c are both marked "N/A," so it is not clear how the amount shown in item 9b was calculated. However, it is our understanding that the lessor would have paid an amount of tax to Texas and included that amount in its calculations of how much to charge you as lease payments. The figure you mention apparently reflects that calculation.

The only credit available in California for taxes a person pays to another state is against that person's own use tax liability in this state. (Rev. & Tax. Code § 6406.) The California use tax on leases of tangible personal property is imposed on the lessee whereas our understanding of the Texas tax in question is that it is imposed on the lessor (even though you may end up bearing the ultimate economic burden in both states). Since each tax is imposed on a different person, the section 6406 credit is not available. Furthermore, the section 6406 credit is not allowed against taxes measured by the periodic payments due under a lease to the extent that the taxes imposed by the other state were also measured by periodic payments made under the lease for a period prior to the use of the property in this state.

Thus, we conclude that your lease of the vehicle is subject to California use tax for periods that the vehicle is in this state. If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Supervising Staff Counsel

DHL:cl

cc: --- District Administrator
--- District Administrator
--- District Administrator