



STATE BOARD OF EQUALIZATION

(916) 445-5550

November 24, 1987

Dear Mr.

This is in response to your letter dated October 29, 1987 regarding the application of sales and use tax to the lease of tangible personal property. You explain:

"We employ approximately 20 people and have one location of business in San Carlos.

---derives income from three main activities:

1. Sales of theatrical rigging equipment
2. Rental of theatrical rigging equipment
3. Supplying labor to supervise installation of the above equipment for various types of shows

Because of the scope of my inquiry I will not expand on items 1 and 3 above at this time.

"Rentals. Since we purchase our rental equipment without paying sales tax, we in turn Charge use tax when it is applicable. The majority of our rentals are for musical touring groups such as --- and the --- etc., or corporate shows for clients like --- etc. The actual equipment use takes place allover the United States and sometimes outside the U.S. Like the actual equipment use our customers are also located all over the U.S. and some abroad. Every possible location combination occurs i.e., client outside the State with use inside the State, client inside the State with use both inside and outside the State, etc.

"It has been my understanding that the location of use is the only factor used to determine whether or not tax is applicable.

"We do not charge tax if the use of the equipment is outside of California. We use several different methods to document this use outside the State. They are as follows:

1. Bill of Lading from trucking company or airline. This method is rarely used because normally rental equipment is picked up by a show .truck, delivered to a local client and they ship it out of State, or it is picked up by a local client.

2. Our contract with client stipulates use only outside the State. When it is known at the time the rental agreement is signed by our client that the equipment will not be used in the State, this fact .is documented in the contract.

3. Tour itinerary. When the rental is to a tour, the tour itinerary shows all the dates and places of use. Tax in these cases in charged only on the weeks during which the equipment is used inside the State. The tax rate is determined by the county in which the equipment is used.

If none of the above conditions occur, it is assumed that the rental is in the State and use tax is applicable.

“If use tax is applicable, the only time it is not charged is if the client says it is for re-rent and they have a valid Resale Card on file at --- If use tax is applicable and the client is not re-renting the equipment, determining the appropriate tax rate seems to give us the most problems. It seems to me that the rate charged should be the rate in the location where the equipment is used. If this is the case, do we take the word of our client over the phone? Should we charge the rate where the equipment is turned over to the customer? Should we charge the rate where we are located? It we have a contract stipulating where the equipment is used or a tour itinerary we automatically charge the rate at the place of use.”

The lease of tangible personal property is a continuing “sale” and “purchase” unless it is leased in substantially the same form as acquired and the lessor either paid sales tax reimbursement to its vendor or timely paid use tax measured by purchase price. (Rev. & Tax Code §§ 6006(g), 6006.1, 6010(e); 6010.1.). If the lessor does not pay sales tax reimbursement to the vendor and desires to pay tax measured by purchase price, that election must be reported and the tax paid timely with the return of the lessor for the period during which the property is first placed in rental service. (Reg. 1660(c)(2).) If this election is not timely made, such as with your current leased property, you may not later change methods of reporting.

With respect to your current leases, you must continue to collect from your lessees use tax measured by rentals payable and pay that tax to the state. With respect to property not yet placed in rental service, you may still elect to pay use tax measured by purchase price if you do so timely or pay sales tax reimbursement to your vendor when purchasing the property. Assuming you lease the property in substantially the same form as acquired, if you make this election no further tax is due on your rentals. (Reg. 1660(c)(2).) The remainder of this opinion applies to the lease of property for which the election is not timely made.

You are correct that use tax applies only with respect to those periods the leased property is situated in this state. (Rev. Tax. Code § 6006.1, 6010.1, Reg. 1660(b)(2).) All rentals payable are subject to tax unless you establish that the leased property was located outside this state for some or all of the rental period.

If you deliver the property to a carrier for shipment out of state, and the lessee delivers the property to a carrier for delivery back to you, with the lessee having no possession of the leased property in this state, no tax applies. (Your situation 1.) You must retain the bill of lading and the contract should confirm that the property is not to be used in this state.

In your situation 2, the contract provides that the property will not be used in this state. However, if the lessee acquires possession in, this state (that is, the lessee picks up the property, drops off the property, or both), use tax applies to any such periods of possession in this state. Although the contract provision may be sufficient, we advise that you also acquire and retain other evidence that the property will not otherwise be used in California except to pickup, dropoff, or both. An itinerary may be sufficient to show this. If not for use on tour, we look to the other facts. For example, if the lease was to a California resident, other evidence besides the contract provision would be required to show that the property was not actually used in California.

In your situation 3, the property will be used both inside and outside California by a touring lessee. In these circumstances, the tour itinerary would be sufficient provided that the leased property was used inside and outside California in conformity with the itinerary. You should, retain that itinerary in your records. Please note that rentals from any period the property is situated in California are subject to tax even if the property is between engagements or enroute.

You are correct that unless you accept a timely resale certificate from the lessee, the rentals will be subject to tax as discussed above. The rate to be applied is as follows. When you have a long term lease of property where an individual county is identified in your records as the single county of use, you should collect the tax at the rate of that county. In all other circumstances, such as when you lease to a touring lessee, you should charge the rate applicable to your county. (Please note that you should allocate the local tax on your sales and use tax return in the same manner as you determine the appropriate tax rate.)

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

Sincerely,

David H. Levine
Tax Counsel

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STATE BOARD OF EQUALIZATION

(916) 445-5550

February 25, 1988

Re:

Dear Mr. Paulson:

This is in response to your letter dated January 20, 1988 regarding the determination of the appropriate use tax rate on leases when the lease transaction involves counties with differing rates (i.e., 6, 6-1/2, or 7 percent). In a letter dated November 24, 1987, we responded to your inquiry on a related subject and briefly covered your current question. Below is a more extended discussion.

The minimum combined sales and use tax rate in California is 6 percent, comprised of 4-3/4 percent state sales or use tax and 1-1/4 percent local sales or use tax. (Rev. & Tax. Code §§ 6051, 6201, 7202, 7203.) Currently, any percentage above 6 percent would be imposed by transit districts pursuant to the Transactions and Use Tax Law, and would be an additional 1/2 or 1 percent. (Rev. & Tax. Code § 7251, et seq.)

Since the local sales or use tax is uniform throughout California and, for your purposes, is applied in the same manner as the state sales or use tax, your primary concern with respect to the local tax is allocation. Our previous letter referred to long-term leases in this context, and you are unsure as to the meaning of "long-term." That reference should have, more specifically, been to long-term leases of fixed personal property, the more important phrase being fixed personal property. This would be, for example, the lease of a building's boiler system or of manufacturing equipment. It appears that none of the property you lease comes within this description since you lease property for use in music shows on tour. Therefore, you have properly been assigned an account number with the Board which indicates to us that all local tax should be allocated to your place of business in San Carlos. (Reg. 1802.)

The applicable transit district's transaction or use tax is determined by the district in which the leased property is used. (Reg. 1823.) For example, if the property is to be used in Alameda County, the applicable rate would be 7 percent, with the 1 percent transit district use taxes allocated 1/2 percent to the Alameda County Transportation Authority and 1/2 percent to BART. However, we recognize that it may be difficult to

ascertain where leased property will be used. Therefore, in absence of evidence to the contrary, it is assumed that the use of property by the lessee occurs in the taxing district in which the lessor delivers the property, or ships it via common carrier, to the lessee. (Reg. 1823(c).) The evidence you would use to make this showing is similar to that discussed in our previous letter for determining when property is used inside or outside California (contract provisions and printed itinerary).

The following discussion applies these rules to specific circumstances. In each case the lessor is located in San Mateo County, which has a 6-1/2 percent rate.

1. The lessee is located in Sacramento County, which has a 6 percent rate. The place of use is Alameda County, which has a 7 percent rate. The lessee takes possession of the equipment at the lessor's premises in San Mateo County.

The lessor delivered the equipment in San Mateo County. Therefore, the 6-1/2 percent San Mateo rate applies unless the lessor has evidence sufficient to show that the use of the equipment occurs in Alameda County. If so, the 7 percent Alameda rate applies.

2. Same as 1 except that the lessor delivers the equipment, or ships it via common carrier, to lessee's premises in Sacramento.

The 6 percent Sacramento rate applies unless the lessor has evidence sufficient to show that the use of the equipment occurs in Alameda County.

3. Same as 1 except that the lessor delivers the equipment, or ships it via common carrier, to Alameda, the place of use.

The 7 percent Alameda rate applies.

4. The lessee is located in Alameda County. The place of use is Sacramento County. The lessee takes possession in San Mateo County.

The 6-1/2 percent San Mateo rate applies unless the lessor has evidence sufficient to show that the use of the equipment occurs in Sacramento.

5. Same as 4 except the lessor delivers the equipment, or Ships it via common carrier, to the lessee's premises in Alameda.

The 7 percent Alameda rate applies unless the lessor has evidence sufficient to show that the use of the equipment occurs in Sacramento.

6. Same as 4 except the lessor delivers the equipment, or ships it via common carrier, to Sacramento County, the place of use.

The 6 percent Sacramento rate applies.

Evidence that you use to show that the place of use is other than the place of delivery should be retained by you. Your use of this evidence should be uniform. That is, the same type of evidence that shows the place of use is one with a lower rate than the place of delivery must also be used to show that the place of use is one with a higher rate than the place of delivery.

If you have further questions, feel free to contact me.

Sincerely,

David H. Levine
Tax Counsel

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bc: San Francisco - District Administrator