



STATE BOARD OF EQUALIZATION

LEGAL DIVISION – MIC: 85

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Executive Director

January 3, 1996

B--- E---, Inc.
Post Office Box XXX
---, --- XXXXX-XXXX

Attention: S--- L---

Re: B--- E---
No Permit Number

Dear Ms. L---

This is in response to your letter dated October 31, 1995 regarding the application of tax to your rental of tangible personal property for use on offshore projects. You state:

“Our company has several jobs offshore California. Often items used on these jobs are rented (i.e., equipment, scaffolding, etc.). I am concerned about the taxability of these rental items. I would appreciate your providing me with the California state guidelines as they relate to rental items used on offshore projects.”

We assume you mean that you lease tangible personal property for your use in waters outside of California, and we assume that your leases are continuing sales and purchases as explained in Regulation 1660(b)(1). Revenue and Taxation Code section 6006.1 provides that the granting of possession of tangible personal property by a lessor to a lessee, or to another person at the direction of the lessee, is a continuing sale in this state by the lessor for the duration of the lease as respects any period of time the leased property is situated in this state, irrespective of the time or place of delivery of the property to the lessee or such other persons.

Regulation 1660(c)(1) explains that in the case of a lease that is a “sale” and “purchase,” the tax is measured by the rentals payable. Generally, the applicable tax is a use tax upon the use in this state of the property by the lessee. The lessee owes the tax, which the lessor is required to collect from the lessee and pay to this Board. (Rev. & Tax. Code §§ 6202,6203, 6204; Reg. 1660(c).) The lessor must collect the tax from the lessee at the time rentals are paid by the lessee and give him or her a receipt of the kind called for in Regulation 1686. The lessee is not relieved from liability for the tax until he or she is given such a receipt or the tax is paid to the state.

It is not clear whether the property will be situated in this state during any of the time you are leasing the property. If the property is not situated in California during the lease term, no California tax will be due on the rentals payable. If the property is inside California during any portion of the lease term, use tax will apply for the period of time the property is inside the state unless an exclusion or exemption from tax applies. Section 6009.1 provides the relevant exclusion:

“‘Storage’ and ‘use’ do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.”

Thus, for example, if you were to store the property in California for the purpose of subsequently transporting it to waters outside California for use solely outside this state, such storage would come within the section 6009.1 exclusion, and you would not owe California tax on such storage. However, you will owe use tax if you make any use of the property in California other than the storage or other exercise of a right or power over the property for the purpose of shipment outside this state for use solely outside this state.

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

Sincerely,

Kelly W. Ching
Staff Counsel

cc: --- District Administrator