


STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
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August 7, 1978

Mr. R--- S. J---, III
 President
 C--- L--- Corporation
 P.O. Box XXX
 --- ---, CA XXXXX

Re: SR -- XX-XXXXXXX

Dear Mr. J---:

We have completed our review of your letter of May 19, 1978, in relation to our discussion of June 16 and the documents that you sent on July 17.

It remains our view that tax applies to the entire amount paid by the lessee to obtain immediate title under the facts you have described, exclusive of any amount paid by him as sales tax reimbursement.

To restate the facts, a lessor acquires certain equipment for \$10,000.00 and pays sales tax reimbursement of \$500.00 upon his purchase. The lessee then acquires possession of the equipment under a lease with a term of 60 months, with monthly payments of \$230.00. The lessee is given an option to purchase the equipment for \$1000.00 at the expiration of the lease term. The lessee, however, decides to purchase after the first 12 months. The lessor requires a payment of \$10,570.0 to accomplish this, which he computes as follows:

Gross lease remaining	\$10,810.00	
Less courtesy rebate	1,300.00	
Net lease receivable		\$ 9,510.00
Purchase option	1,000.00	
Sales tax on option	60.00	
Total purchase price		1,060.00
Total to terminate		\$10,570.00

It is our view on these facts that the lessor and lessee have entered into a new contract which is for transfer of title to the lessee and that tax applies to the entire amount paid by the lessee for that transfer of title, less the amount of \$60 that is intended as sales tax reimbursement. Accordingly, the measure of tax on that sale is \$10,510.00.

In your original letter, you state as one of the facts that the lessee had made an advance payment of the last month's rental to the lessor at the time the lease was entered into. At our June 16 meeting we asked for copies of typical contracts to more clearly define those payments. The contracts you sent do not expressly refer to advance payments of the last month's rent, but do refer to a security deposit. One contract form provides that the deposit is to be held as security for performance of the terms of the lease and, if the lessee is not in default at the end of the term, is to be refunded to the lessee or, solely at the lessor's option, is to be applied to payment of rent due in the inverse order of their maturities. Another contract form provides that the deposit may be applied by the lessor to cure any default of the lessee and, if all conditions are complied with, is to be refunded to the lessee.

If the lessee is not in default at the time he contracts to acquire title, and the security deposit is not refunded to him, it is our view that the measure of tax on the lessor's sale of the equipment should also include the amount of the security deposit.

If you have any further questions, please let us know.

Sincerely,

Thomas P. Putnam
Assistant Chief Counsel

TPP:po

cc: A--- K---, President
A--- S--- Leasing
P. O. Box XXX
---, CA XXXXX