

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

June 6, 1989

Mr. W--- V--- W---

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XXX --- --- ---, Suite XXX

P. O. Box XXXX

--- ---, CA. XXXXX-XXXX

Re: A--- C---, Inc.  
SS -- XX-XXXXXX

Dear Mr. W--- V--- W---:

This is in response to your letter dated May 17, 1989 regarding the application of sales and use tax upon an exchange of property for first issue stock.

A parent corporation owned real estate, fixtures affixed to real estate, mobile transportation equipment (MTE), and other tangible personal property. The parent paid California sales or use tax on all tangible personal property at the time of its original acquisition. This property will be transferred to the subsidiary, A---, in exchange solely for first issue stock (I assume the parent will receive not other consideration such as an assumption of indebtedness by A---). A--- will lease this property to the parent without making any functional use of the property. You ask:

- (1) Does California use tax apply to the lease receipts resulting from the lease of tangible personal property to the parent corporation? If so, is the "tax-paid property" election available to the lessor.
- (2) Is there a use tax consequence as a result of the lease of MTE?

Discussion

As described in Regulation 1595(b)(4), sales tax does not apply to the transfer of property in exchange solely for first issue stock nor does use tax apply to the new corporation's use of that property. Thus, when A--- uses the property acquired from its parent, no use tax is applicable to that use. However, the lease of non-MTE tangible personal property is a sale unless the lessor pays sales tax reimbursement to its vendor or timely pays use tax measured by purchase price. (Rev. & Tax. Code § 6006(g)(5). When a lessor elects to pay use tax measured by purchase price, that lessor is paying its own use tax liability. The lease of such tax-paid property is regarded as part of the lessor's consumption. A lessor that does not have use tax liability on its use of property may not elect to exclude its leases from the definition of sale by paying use tax measured by purchase price without specific statutory authority to do so. (Cf. Rev. & Tax. Code § 6094.1.) Thus, the lease by A--- of tangible personal property, including leased fixtures as set forth in Revenue and Taxation Code Section 6016.3, is subject to use tax on the lessee measured by rentals payable which A--- must collect and pay to this Board. (Reg. 1660.)

Unlike the lease of non-MTE tangible personal property, the lease of MTE is not regarded as a sale. (Rev. & Tax. Code § 6006(g)(4).) The lessor is always regarded as the consumer of the leased MTE. When that use is subject to use tax, the lessor owes use tax measured by purchase price unless it makes a timely election to pay the tax measured by fair rental value. (Rev. & Tax. Code §§ 6094(d), 6244(d).) As discussed above, A--- acquired the MTE under circumstances where its use of the MTE is not subject to use tax. Its use of the MTE by leasing is also not subject to use tax.

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

Sincerely,

David H. Levine  
Tax Counsel

DHL/smt