



STATE BOARD OF EQUALIZATION

December 30, 1996

Re: Purchase of Shuttle Buses Leased to General Services

Dear: ---

This is in response to your letter of November 22, 1996 in which you inquired about the application of California's Sales and Use Tax Laws on leases of buses used in --- to provide shuttle bus services from State parking lots to ---'s --- State office buildings.

You explain that --- has entered into a contract with the General Services Administration to provide buses and shuttle bus service in the --- area between State parking lots and California State office buildings' --- --- ---. The leases are for five year terms and the contracts provide that the buses can only be used for shuttle services. With your letter, you include copies of registration records from the Department of Motor Vehicles which explain that these vehicles are exempt from vehicle registration fees. These records name --- as the lessor of the buses and the Department of General Services as the lessee. You have asked whether the purchase of these vehicles are also exempt under California's Sales and Use Tax Laws.

I have contacted a representative of the Department of Motor Vehicles who explained that these vehicles are most likely exempt under section 9101 of the California Vehicle Code which provides, in part, that registration fees are not required to be paid for:

"any vehicle operated by the State, or the county, city district, or political division of the State or the United States, as lessee under a lease, lease-sale, or rental-purchase agreement which grants possession of the vehicle to the lessee for a period of 30 consecutive days or more."

When I spoke to you on December 23, 1996, you indicated that it was your understanding that these vehicles qualified for the "low emission motor vehicle" sales and use tax exemption accorded under Revenue and Taxation Code section 6356.5. This section, which, under specified circumstances, provided an exemption from sales and use tax on the incremental costs of the sales and use of low emission vehicles, was only operative for vehicles acquired during the period of January 1, 1990 through January 1, 1995. Since these vehicles were purchased in October of 1996, they are not eligible for the exemption provided under section 6356.5. Thus, the tax obligations associated with the purchase of these vehicles must be analyzed under the general sales and use tax laws.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property occurring in California. The sales tax is imposed upon the retailer, but the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. Civ. Code § 1656.1.

Revenue and Taxation Code section 6201 imposes an excise tax, commonly referred to as the use tax, on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. The use tax complements the sales tax and is most frequently imposed upon in-state leases, out-of-state purchases of property for use in California, and use of property purchased with a resale certificate.

The application of tax to sales and leases of mobile transportation equipment (MTE) is different from other tangible personal property. Section 6023 of the Revenue and Taxation Code includes buses in the definition of MTE. Thus, section 6023 applies to the buses acquired by Amador. The regulation which governs leases of MTE is Regulation 1661, a copy is enclosed for your review. A lease of MTE is never a sale and purchase. (See Rev. & Tax. Code § 6006(g)(4) and 6010(e)(4).) Thus, a sale of MTE which the purchaser subsequently leases is not a sale for resale. The sale of MTE to a person who will lease that property is a retail sale and the sale to the lessor, or the use by the lessor (by leasing), is subject to sales or use tax. (Rev. & Tax. Code §§ 6051, 6201; Reg. 1661(b)(1).) Where the use of MTE will be limited to leasing and the lessor makes a timely election to do so, the lessor may pay its tax liability measured by the fair rental value of the MTE. (Reg. 1661(b)(2).) This election is made by reporting tax measured by the fair rental value on a timely filed return for the period in which the MTE is first leased. Tax must thereafter be paid with the return for each reporting period, measured by the fair rental value, whether the MTE is within or without the state. The election may not be revoked with respect to the MTE as to which it is made. (Rev. & Tax. Code §§ 6092.1, 6094(d), 6243.1, and 6244(d).)

Since the sales tax was paid at the time --- purchased these buses, it has elected not to pay the tax liability measured by the fair rental value of these buses. However, in future acquisitions of buses which are to be leased, --- may consider purchasing the vehicles under a resale certificate and reporting use tax on the rental receipts. (Reg. 1661 (b)(2).) As explained above, the election must be made by timely reporting the use tax, measured by the fair market value of the buses, for the reporting period in which the buses are first leased. If you have any further questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Tax Counsel

PHJ:cl
Enclosure (Regulation 1661)
cc: --- District Administrator