STATE OF CALIFORNIA

335.0980

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)
(916) 445-5550

May 24, 1984

Mr. R--- C---
Attorney, Tax Division
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--- Building
---, --- XXXXX

Dear Mr. C---:

As promised in our meeting on May 18, 1984, I enclose a copy of my letter of February 17, 1982 to C--- S--- concerning leases of mobile transportation equipment.

Very truly yours,

John H. Murray
Tax Counsel

JHM:ss

Enclosure

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February 17, 1982

Express Mail

Mr. C--- E. S---
Attorney, Tax Division
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--- Building
---, --- XXXXX

Dear Mr. S---:

Leases of Mobile Transportation Equipment

You have asked that I give you the reasons why we consider the judgments in United States v. State Board of Equalization, No. CV 79-03359, and United States v. State Board of Equalization, No. CV 81-01588, do not govern the application of the California sales and use tax to leases of mobile transportation equipment to the United States and to the tax liability of construction contractors constructing improvements on or to realty in this state.

Under Section 6006 of the California Revenue and Taxation Code (all references, unless otherwise stated, will be to that code) provides, in part:

"'Sale' means and includes:

* * *

"(g) Any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except a lease of:

* * *

"(4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023.

* * *

"

The application of tax to leases in general and mobile transportation equipment in particular is explained in Regulations 1660 and 1661, copies of which are enclosed for your ready reference. We also enclose a pamphlet copy of the California Sales and Use Tax Law.

The lessor of mobile transportation equipment under California law is the consumer of that equipment. Accordingly, either the sales tax applies to the sale of the equipment to the lessor or if the property is purchased under a resale certificate, use tax applies to the purchase price of that property. The lessor is given the option to report and pay his use tax liability measured by his rental charge provides he makes a timely election to do so.

The above two cases held that the application of the California sales tax to the rental receipts with respect to leases to the United States was invalid because the incidence of the California tax is, for federal purposes, upon the purchaser. The states may not tax the United States without its consent. Accordingly, the California sales tax on the rental receipts from leases is an unconstitutional tax upon the United States. The trial court also found that the California method of taxing lease sales of tangible personal property invidiously discriminated against the United States.

Neither of these holdings applies to leases of mobile transportation equipment.

In all instances lessor of mobile transportation equipment are the consumers of that equipment. The sale of the equipment to the lessor is subject to sales tax or the use of the equipment by the lessor in leasing the equipment is subject to the use tax. Thus, the incidence of the tax is never upon the lessee. The leases of mobile transportation equipment to the United States or to any other party are not sales and are taxed in the same manner. There is no discrimination for or against lessor leasing mobile transportation equipment to the United States.

The application of the California tax to construction contractors is explained in Regulation 1521, a copy of which is enclosed. You will note that construction contractors doing business with the United States are the consumers of materials and fixtures which are used by the contractor in the performance of contracts with the United States for the improvement of real property. This is provided by Sections 6007.5 and 6384.

Construction contractors performing contracts for the construction of improvements to real property for persons other than the United States are the consumers of materials and the retailers of fixtures which they furnish and install.

In each instance, the contractors are the consumers of materials, and any tax is imposed upon either the acquisition of those materials by the contractor or the use by the contractor in performing the contracts. Thus, there is not sale to the United States, no gross receipts from such a sale, and the incidence of tax is upon the contractor, not the United States.

While United States contractors are the consumers of fixtures and other contractors are the retailers of fixtures, the incidence of the California tax is each instance is upon the contractor and not upon the landowner. Any difference in treatment with respect to fixtures is a difference under which the federal contractor is taxed either the same as or less than a contractor performing construction contracts for someone other than the United States. This cannot be considered to be invidious discrimination.

In summary, the two cases mentioned above involve instances in which property is leased to or sold to the United States or its instrumentalities. The only tax in question is a sales tax measured by the gross receipts from those sales. The trial court held the incidence of this tax to be upon the United States or its instrumentalities. However, where mobile transportation equipment and materials and fixtures used in performing construction contracts are concerned, there is no sale to the United States, and the lessor or the contractor, as the case may be, is the consumer of the tangible personal property involved, and the tax applies either to his acquisition or use of that property. Accordingly, it is our belief that the issues raised and the conclusions reached in the above two cases are different than any issues which might be involved in connection with leases of mobile transportation equipment or the application of tax to construction contracts.

If you have any further questions, please call me.

Very truly yours,

John H. Murray
Tax Counsel

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Enclosures

cc: Mr. N--- J. G---