



**STATE BOARD OF EQUALIZATION**

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September 29, 1997

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Executive Director

Mr. J--- S---  
S--- & C---, CPA  
XXXX --- ---  
---, CA XXXXX

Sent via facsimile transmission  
to (XXX) XXX-XXXX

Re: Mobile Transportation Equipment

Dear Mr. S---:

This is in reply to your facsimile transmission of September 25, 1997.

We understand that your client, B--- A---, L.L.C., a Delaware company, purchased an aircraft outside of California. B--- is a lessor of a single aircraft. This is its only business. On or about the time refurbishment was completed, the aircraft was leased to parties who contemplated bringing the aircraft to [city] airport, which will serve as its base. B--- intends to make an election under Sales and Use Tax Regulation 1661(b)(2) to "elect to pay its use tax liability measured by the fair rental value" by making an election before the due date of the return.

You have been advised by State Board of Equalization personnel that B--- would be required to obtain a seller's permit. You submitted an application for such a permit to Mr. Tran of our Van Nuys office. You inquired as to whether an application for a consumer use tax account would be more appropriate for the purpose of making the election.

While the tax in question is a use tax, we do require that the lessor obtain a seller's permit. In ordinary circumstances, this enables the seller to issue a resale certificate to its vendor, in order to acquire the aircraft tax free.

Your real question, however, concerns application of the tax when the aircraft is taken out of lease service and resold.

An aircraft is regarded as mobile transportation equipment under the California Sales and Use Tax Law. The lessor is required to pay tax measured by the cost at the time of acquisition, or the lessor may elect to pay tax on the fair rental value basis. In situations where the aircraft is disposed of during its useful life, the aggregate measure of tax on the fair rental basis may be less than the purchase price. This alone does not trigger application of additional use tax. The election is not true "installment" election, but is an alternative method of tax computation.

The election provided by Revenue and Taxation Code section 6244 is available when the use of the property is limited to leasing. If the property is withdrawn from lease inventory for other use, additional tax will be due. We understand at some point your client may decide to discontinue its leasing business and sell or otherwise dispose of (including trade-in) the aircraft out of state. No additional sales or use tax would be due by virtue of such disposal. If the aircraft were sold in California, that transaction would be subject to tax.

Very truly yours,

Gary J. Jugum  
Assistant Chief Counsel

GJJ:sr