STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-3723

July 19, 1996

Dear _____,

I am writing in response to your letter of May 1, 1996 regarding the application of Sales and Use tax to leases of chemical toilet units.

You have requested a legal opinion; however, you did not identify your client or clients. Therefore, this information is provided to you for general information only, and your client or clients may not rely on the information for purposes of Revenue and Taxation Code section 6596.

As you pointed out in your letter, the general rule set out in Sales and Use Tax Regulation 1660(c)(2) provides that no sales or use tax is due with respect to the rentals charged for tangible personal property leased in the same form as acquired by the lessor as to which the lessor has paid sales tax reimbursement or has timely paid use tax measured by the purchase price.

You further recognized that in the case of chemical toilets (hereinafter referred to as "unit" or "units"), an exception to the general rule set out in 1660(c) exists, whereby lessors of units are not permitted to elect to pay tax measured by the purchase price, but must report and collect the use tax from the lessee based on the lease or rental payments received. This results from the specific provisions of Revenue and Taxation Code section 6010.7.

You then specifically inquired whether, if the lessor has paid sales tax reimbursement to his vendor or paid use tax on the purchase price and also properly reported the lease or rental receipts, the lessor may take the "tax-paid purchase resold" deduction provided for in Regulation 1701.

I assume that you are concerned because Regulation 1600(d)(1) states that the taxpayer must report based on the lease or rental payments "regardless or whether sales tax reimbursement or use tax has been paid." We do not construe this language as prohibiting the taxpayer from taking advantage of the tax-paid purchase resold deduction where it has erroneously paid sales tax reimbursement or use tax on the acquisition of units. Rather, the purpose of the quoted language is to apply the provisions of Revenue and Taxation Code section 6010.7 that the lessor of "units" may not elect to pay tax based on the purchase price of units. The tax-paid purchases resold deduction applies when a person erroneously pays sales tax reimbursement or use tax and thereafter sells the property with no intervening use. When a person purchases a chemical toilet solely for the purpose of leasing, the person purchases the unit for resale. Thus,

the person is entitled to the tax-paid purchases resold deduction for use tax or sales tax reimbursement paid on the purchase price. (Sales and Use Tax Reg. 1701.)

Regulation 1701 also requires that the deduction be taken "on the retailer's return in which his sale of the property is included." If the taxpayer fails to claim the deduction on the first return for which rental receipts are reported, then the taxpayer may file a claim for refund of the use tax paid that would have been deductible on a timely return, or look to its vendor for a refund of sales tax reimbursement paid. The taxpayer may not, however, attempt to claim the deduction on a return which is not the first return for which rental receipts on the unit was reported by claiming an "offset," nor may it file a claim for refund for sales tax reimbursement paid, as that refund is only available to the retailer who sold the unit and who paid the tax.

Finally, you inquired whether a taxpayer who has failed to properly and timely report lease and rental receipts for units, but who did erroneously pay sales tax reimbursement or use tax on the units, may use the tax-paid purchase resold deduction as an offset against use tax which is due on the rental or lease payments. No, but if the applicable statute of limitations on refund claims has not run, then the taxpayer may file a claim for refund of the use tax paid. As to sales tax reimbursement paid, the taxpayer must, again, look to its vendor for any applicable refund due.

I hope our response to your inquiry will be helpful to you in advising your clients.

Very truly yours,

John S. Butterfield
Tax Counsel