



STATE BOARD OF EQUALIZATION

July 16, 1968

Gentlemen:

This is with reference to your letter of July 9, 1968 regarding the rental of tower cranes and construction hoists.

You state the equipment is not mobile and is rented on a monthly rate plus a lump-sum charge for hauling to the jobsite, erection and subsequent dismantling, if applicable.

You state that the lessee has the option of whether he wants to do the hauling, erection and dismantling, and if the lessee desires your firm to do it, you subcontract the work to a third party. Where this is the case, you charge the lessee your exact cost from the third party.

Under the law today, leases are continuing sales and the tax on delivery charges, where the rental receipts are taxable, is applied in the same manner as in sales. Under Ruling 58, tax does not apply to separately stated charges for transportation of property from the retailer's place of business or other point from which shipment is made directly to a place specified by the purchaser, provided the transportation is by other than facilities of the retailer, i.e., independent contract. The place where title passes (the lease commences) is immaterial, except where the property is sold (leased) for a delivered price.

Inasmuch as the lessee has the option of transporting the equipment, it is our opinion that the equipment is not leased for a delivered price or rate. Thus, where you contract with some independent party to transport the equipment, the [separately stated] charge for the transportation would not be subject to tax.

The charge for the dismantling would not be taxable regardless of whether your firm or an independent party did the work.

If your firm with the use of your facilities, transported the equipment to the jobsite, the charge would be taxable unless the lease commenced when the equipment left the point of debarkation. In other words, if the lease commenced when the equipment was delivered, the charge for the delivery would be taxable.

Under the concept that the charges for the reassembly (erection) of the equipment is a service connected with a sale (lease), the charge would be taxable if the erection occurred before the lease commenced. If the lease commenced when the equipment left the point of debarkation, the charge for the erection at the jobsite would not be taxable.

Very truly yours,

Robert H. Anderson
Tax Counsel
RHA/vs [lb]