



STATE BOARD OF EQUALIZATION

LEGAL DIVISION - MIC 82
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)

Telephone No.: (916) 324-3828
Fax No: (916) 323-3387

JOHAN KLEHS
First District, Hayward

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May 23, 1995

BURTON W. OLIVER
Executive Director

Hon. D--- G---
Mayor, City of --- ---
XXXX --- ---
P.O. Box XXXX
--- ---, CA XXXXX-XXXX

RE: S- -- XX-XXXXXX
Confidentiality of Tax Returns

Dear Mayor G---:

We have received information that on October 28, 1994 Mr. T--- E. L---, Deputy Executive Director of the [city] Community Redevelopment Agency, sent B--- F--- S--- a letter requesting the latter to allocate local tax using Schedule C so that tax could be allocated directly to the City of --- --- rather than to the countywide tax pool of --- County. In his letter he indicated that he had written similar letters to other dealerships in the city having a high level of leasing activity.

This letter is disturbing to us for two reasons. First, Mr. L---, who does not appear to be a lawyer, is giving legal advice regarding local tax allocation to taxpayers, and that advice is incorrect. The lease (or rental) of tangible personal property in California is a continuing sale unless that property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax measured by the purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1; Reg. 1660. Unless otherwise stated, all statutory references are to the Revenue and Taxation Code. Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) If the lease is a continuing sale under this definition, that lease is subject to use tax measured by rentals payable unless it is specifically exempted by statute. (Reg. 1660(c)(1).) Car dealers generally do not pay tax up front but collect use tax with the rentals payments. (See, §§ 6010(c)(5) & 6011(b); Reg. 1660 (c)(1).) The car dealer is thus treated as the retailer of the property and must collect the use tax from the lessee. (§ 6203(c); Reg. 1660(c)(1).)

The letter states that leases of automobiles give rise to local sales tax revenue. As you can see from the above, leases which are continuing sales and purchases give rise to use tax, not sales tax. Section 7205, which by its terms applies only to local sales tax, allocates sales tax revenues based on where the sale takes place or is deemed to take place. (See Reg. 1802.) With regard to local use tax, however, the local use tax ordinance of the place where the property is functionally used applies to the transaction--here, leases of automobiles.

The State Board of Equalization is the agency charged with maintaining the integrity of the local tax system. It is our duty to give out legal advice regarding the application of the Local Tax Law. If a misallocation of local tax revenues occurs, the Board is authorized to redistribute tax to the proper quarter. (§ 7209.) The taxpayer in this case appears to be applying local use tax revenue correctly. It is likely that the other taxpayers Mr. L--- contacted are also applying the use tax ordinances of the correct jurisdictions. We therefore request that the city cease telling taxpayers how to fill out their returns and instructing them to apply the improper tax to their transactions.

The second problem is much more serious. Mr. L--- attached to his letter a copy of a tax return which was that of a taxpayer other than the one to whom the letter was addressed. This problem has two facets. The first is how the City of --- --- got a copy of that taxpayer's return, since that taxpayer does not have a location in the city and so does not report local tax to it. The second is more important. Supplying one taxpayer's sales and use tax return to another taxpayer is a grave breach of the confidentiality required by section 7056. Except as provided in that statute, it is unlawful for any person having access to taxpayer records to "make known in any manner whatever the business affairs, operations, or any other information pertaining to any retailer or any other person required to report to the board or pay a [sales or use tax]. . . or to permit any return or copy thereof. . . to be seen or examined by any person." It has been found that this section manifests "a clear legislative intent that disclosures made in tax returns shall not be indiscriminately exposed to public scrutiny. (Sav-on Drugs, Inc. v. S.B.E. (1975) 15 Cal.3d 1, 6.)

Under section 7056(b), a city's representatives may, by a resolution which must contain certain terms, examine the sales and use tax records of the Board pertaining to the local revenues collected for that city. Information obtained in this manner may be used only for purposes related to the collection of sales and use taxes by the Board pursuant to the contract required by section 7202(d) or for purposes related to other governmental functions of the city set forth in the resolution. (§ 7056(b)(2).)

The City of --- --- passed such a resolution as No. 9272 and dated March 4, 1992, which superseded an earlier resolution. In Section 4, it states as follows:

"Information obtained by examination of board records shall be used only for purposes related to the collection of local sales and use taxes by the Board for municipal revenue forecasting and verification."

State Board of Equalization Form BT-755, which people seeking access to Board records must sign, also discusses the confidentiality requirements of section 7056.

While the city may use taxpayer records for its own governmental purposes, those purposes do not include releasing taxpayer records to persons not authorized to have them. Privacy of taxpayer records is a fundamental right and may be compromised only under the narrow confines of the statute. Unauthorized releases of taxpayer records could have grave results. Thus, the City of --- --- must at once cease sending taxpayer records to other taxpayers. If it does not, the Board may impose such conditions as it deems reasonable on the city's access to Board records in order to protect the confidentiality of those records. (§§ 7056(c); 7153.)

Copies of Ordinance Number 9272 and Form BT-755 are enclosed for your ease of reference.

Sincerely,

John L. Waid
Tax Counsel

JLW:sr

Enclosures: Resolution No. 9272; BT-755

cc: Mr. L--- L
---, --- and ---
XXXX --- --- #XXX
---, CA XXXXX

Mr. Allan K. Stuckey (MIC:31)
Ms. Joan Albu (MIC:30)
Mr. Larry Micheli (MIC:27)
Ms. Ani Kindall (MIC:82)