

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

March 5, 1992

Mr. P--- B---
H--- and C---
XXXX --- Street
--- ---, California XXXXX-XXXX

RE: SR -- XX-XXXXXX

Dear Mr. B---:

This is in response to your fax transmission dated February 6, 1992. You state that your inquiry is limited to whether there is use tax liability on materials consumed in the performance of repairs under terms of a lease that includes a mandatory maintenance contract. This is in the context of a lease where the lessor paid tax measured by purchase price and therefore is not regarded as making a continuing sale when leasing the property. Thus, use tax is not being collected upon the rentals payable, which include the charges for the maintenance.

When a lessor leases property in substantially the same form as acquired and makes a timely election to pay sales tax reimbursement or use tax measured by the purchase price, then the lease is not regarded as a sale under the Sales and Use Tax Law. (Rev. & Tax. Code § 6005(g)(5).) That is, the lessor is the consumer of the leased property. If the lessor purchases parts to use in repairing the leased property, then the lessor is also the consumer of those parts since they are being incorporated into property which the lessor is not reselling. Therefore, the answer to your question is that the lessor of property which is being leased in transactions which are not regarded as continuing sales is the consumer of any parts that lessor purchases for use in repairing the leased property. Sales or use tax applies to that purchase of parts.

Along with your fax transmission to this division, you included a copy of your fax transmission to the district office of the Board which included other questions which apparently were answered by the district office. I assume that the audit staff explained why your example 2 is incorrect since a lessor who manufactures property to be leased cannot avoid the requirement to collect use tax measured by rentals payable by attempting to report tax on purchase price. (Rev. & Tax. Code § 6006(g), Reg. 1660.) Additionally, I note that it is possible that some parts used to

repair property leased in a continuing sale would not be purchased for resale. That is, if the lessor contracts to have repairs performed by another person, the repairer is the consumer of parts and materials furnished in connection with repair work under circumstances explained in subdivision (b)(2) of Regulation 1546. A copy of which is enclosed.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:cl