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September 24, 1993

Mr. V--- B. S---  
XXXXX --- ---  
--- ---, CA XXXXX

BURTON W. OLIVER  
*Executive Director*

Dear Mr. S---:

This is in response to your letter dated April 16, 1993, which was forwarded to the Legal Division for review. In your letter, you state:

“I request an opinion with respect to the following matter:

“A corporation purchases (and pays sales tax) on a car selected by, and driven by a senior officer. The corporation sets a dollar limit on the amount it will pay for the vehicle, and if a more expensive car is selected, the senior officer is required to pay (i.e., reimburse) the company for the difference between the (final) cost of the car (including sales tax) and the corporation’s dollar limit (including sales tax). The reason the officer is willing to pay this difference is because it is the policy of the corporation to give the car to the senior officer at the end of four years.

“The corporation includes 1/4 of the amount paid by the corporation (including any sales tax paid) as compensation in the senior officer’s Form W-2.

“At the end of the four year period, the car becomes the property of the senior officer.”

You ask several questions concerning the sales tax consequences of these transactions including the questions for the following two hypothetical facts:

“(3) If the vehicle purchased tax paid cost \$60,000 (ex-tax) and the senior officer reimbursed the corporation \$30,000 (plus tax) for the portion exceeding the limit, is any tax due upon registering the vehicle when title is transferred to the senior officer if the vehicle has a residual value of \$10,000, but the corporation is paid nothing. . . .

“(8) Sometimes a senior officer will quit before four years passes. Assuming the same facts as in question (3) above, except that only \$20,000 (plus tax) of the \$30,000 (plus tax) paid by the corporation has been earned (i.e. included as compensation in the senior officers’ Form W-2), and the senior officer reimburses the company an additional \$10,000 (plus tax) for the portion unearned (as is the policy) in addition to the previously reimbursed \$30,000 in excess of the corporation’s limit (i.e. \$40,000 in total) how much tax is due if the vehicle is worth \$10,000 at the time of registration (due to the transfer of title)?”

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Revenue and Taxation Code section 6201 imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state.

In California the general rule is that a lease of tangible personal property is a continuing sale and purchase. The lessor must collect use tax from the lessee at the time rentals are paid and pay the tax to the state. The use tax is measured by the rentals payable. Rev. & Tax. Code §§ 6006(g), 6006.1, 6010(e), and 6010.1 and Regulation 1660(c)(1).

For certain types of tangible personal property, however, the lessor may elect to pay tax on the purchase price of the property rather than on rental receipts. This is the tax-paid lease exception. It applies to a lease of tangible personal property which is leased in substantially the same form as acquired and for which the lessor has paid sales tax reimbursement or use tax measured by the purchase price of the property. Rev. & Tax. Code §§ 6006(g)(5) and 6010(e)(5).

If a lessor sells property to a lessee during the term of the lease or after the lease of the property terminates, tax applies to the amount paid by the lessee for the property. Rev. & Tax. Code §§ 6051 and 6201. See also Regulation 1660(c)(7). This rule applies whether the tax-paid lease exception applied to the lease or the lease was a continuing sale and purchase.

A “lease” includes rental, hire, and license. Rev. & Tax. Code § 6006.3. Where a contract designated as a lease binds the “lessee” for a fixed term and the “lessee” is to obtain title at the end of the term upon completion of the required payments or has the option to purchase the property for a nominal amount, the contract will be regarded as a sale under a security agreement from its inception and not as a lease. The option price will be regarded as nominal if it does not exceed \$100 or 1 percent of the total contract price, whichever is the lesser amount. Rev. & Tax. Code § 6006.3 and Regulation 1660(a)(2)(A).

According to your description of the facts, the corporation provides its senior officers vehicles for their use as part of their compensation from the corporation. We assume that a senior officer may terminate at will his or her employment with the corporation. In that case, we

regard the officer's use of the vehicle as a lease.<sup>1/</sup> Since the corporation is leasing the vehicle to the officer in the same form as acquired and the corporation has paid sales tax reimbursement to the dealer of the vehicle, the rent is not subject to tax.

If at the end of four years the officer is not required to make a payment to the corporation to obtain title to the automobile, there is no sale to the officer and therefore no tax. If the officer quits before four years have passed and the officer must pay a certain amount to obtain title to the vehicle, there is a sale. If the corporation is not a licensed dealer, the corporation is not liable for sales tax and should not collect tax reimbursement from the officer. Rather, the officer must pay to DMV use tax measured by the purchase price. Rev. & Tax. Code §§ 6275, 6282, 6291, and 6367. The purchase price is the amount paid by the officer to the corporation to obtain title.

In the first example quoted above, neither the corporation nor the officer would have a tax liability when title is passed to the officer since no sale has occurred. Assuming the corporation is not a licensed dealer, in the second example the officer would have to pay use tax on \$10,000 which is the amount the officer paid to the corporation to acquire title. If the corporation is a licensed dealer, the corporation is liable for sales tax on \$10,000.

Revenue and Taxation Code section 6596 provides the only basis for relief from tax if a taxpayer relies on incorrect written advice from the board. The primary conditions to qualify are that the request for opinion must be in writing and must disclose all relevant facts, including the identity of the taxpayer. Since you have not identified your client, this opinion does not come within the provisions of section 6596 but rather is simply general advice regarding a set of hypothetical facts.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu  
Tax Counsel

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<sup>1/</sup> If the officer may not terminate his employment prior to the time title to the vehicle is to pass to the officer, there may be a sale at inception rather than a lease. If so, the above analysis would not apply.