

**STATE BOARD OF EQUALIZATION**

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

November 26, 1971

Mr. R--- Z---
--- --- & Company
XXX --- Street
--- ---, California XXXXX

Dear Mr. Z---:

On June 29, 1971, we advised you as to our opinion as to the application of the tax to the following described transaction:

“...your client purchases computer equipment in Illinois. Illinois tax is paid with respect to this purchase. The client leases the equipment to customers in Illinois for a substantial period. Upon termination of the lease the client transports the property to California with the intention of placing the property in lease service here. The property is brought into this state more than ninety days from the date of the purchase of the property by the client.” [The equipment is then placed in rental service in this state.]

We advised you that tax would apply on the rental of the equipment in this state unless your client reported and paid use tax (measured by the sales price of the equipment to your client) prior to the time the equipment was first placed in rental service in this state. We cited California Tax Service annotation 1535.07 (October 5, 1965), no renumbered as 330.1840, for the proposition that a:

“Taxpayer may elect to pay the use tax ... in lieu of paying the tax on rental receipts [even though the property was used outside this state for a substantial period of time before being brought to this state] on the theory that in so doing, he admits he purchased the ... [property] for use in California.”

Upon further review of this matter, we have concluded that the annotation referred to is a misstatement of the law and that a taxpayer may not “elect” to pay use tax, in disregard of the fact that under the statute no use tax liability is in fact imposed.

Section 6201 of the Revenue and Taxation Code provides that:

“An excise tax is hereby imposed 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...” [Emphasis added.]

We are of the opinion that the equipment purchased outside this state, placed in rental service outside this state, held in rental service for a substantial period (more than ninety days) and subsequently brought into this state to be placed in rental service here, is not “purchased...for...use...in this state” within the meaning of section 6201, unless it can be specifically established that at the time the equipment was purchased, the purchaser intended to utilize it in this state. If, for example, a taxpayer purchased certain equipment to be utilized in the performance of a contract to be performed in this state, but the equipment was first utilized outside this state (for more than ninety days) due to a delay in the commencement of the California contract, then the taxpayer could pay tax measured by the sales price to him of the equipment, if the tax was paid prior to the time the equipment was first placed in rental service in this state. The taxpayer could then take any credit allowed by section 6406.

Applying the principle set forth above to the hypothetical case suggested by you, your client would not be able to pay use tax measured by his purchase price of the equipment (netting the tax liability against the credit provided by section 6406) but would be required to collect and report tax on rental receipts. Of course, to the extent one of your clients may have relied on our advice of June 29, 1971, and actually reported and paid use tax prior to the time the equipment was first placed in rental service in this state, your client would not be required to collect and report tax on rental receipts.

We have taken steps to see that the last sentence of annotation 330.1840 is deleted from the California Tax Service.

Very truly yours,

Gary J. Jugum
Tax Counsel

GJJ/ab

Memorandum

330.2290

File

April 28, 1975

Gary J. Jugum

R--- Z---
--- --- & Company

The attached letter dated November 26, 1971, and addressed to Mr. R--- Z--- of --- & --- Company has been annotated at the request of Mr. Robert Nunes.

j:alicetilton

Attachment