

**STATE BOARD OF EQUALIZATION**

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

May 8, 1990

Re: ---

Dear ---:

In a letter dated March 22, 1990, I responded to your inquiry regarding the application of sales or use tax to your lease of tangible personal property. Since your inquiry did not contain a complete description of the transaction, my letter was a general discussion of how tax applies to leases. Phillip Gong, an auditor in the Board's District Office with whom you have discussed this matter, has provided me with certain information regarding the transaction about which you inquire, as follows:

"Mr. --- was 50% partner in a partnership which was dissolved.

"As part of the partnership dissolution, Mr. --- received approximately half of the printing equipment and other assets. The printing equipment was purchased tax paid.

"Mr. --- started his own business as a sole proprietor with the printing equipment he received from the partnership dissolution.

"Mr. --- later incorporated his business (XX, Inc.)

"When Mr. --- incorporated, he retained title to the printing equipment he had received from the partnership. He leased the printing equipment as an individual to the corporation (XX, Inc.).

In my previous letter to you, I stated: "If you paid sales tax reimbursement when purchasing the equipment, and if you lease the property in the same form as acquired, then a true lease would not be regarded as a continuing sale and purchase. No sales or use tax would be applicable to that lease." The "you" in this discussion means the same person who is leasing the tangible personal property (except for a transferor in certain transactions different from this one). As I understand the transaction, the partnership paid the sales tax reimbursement with respect to the property in question, but you did not when acquiring the property from the partnership. Under Revenue and Taxation Code section 6005, the partnership is a person separate from the individual partners. Thus, while the partnership paid sales tax reimbursement, you, as an individual (and separate person), did not.

Since you did not pay sales tax reimbursement or use tax with respect to the property, your lease of that property is a continuing sale and is subject to use tax on the lessee, measured by rentals payable, which you must collect and pay to the state.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

DHL:wak
2159C

cc: Mr. Phillip Gong, Auditing