



STATE BOARD OF EQUALIZATION

(916) 324-8208

May 10, 1991

Mr. J--- W---
Attorney at Law
Post Office Box XXXX
---, California XXXXX

Re: Lease of Mercedes Benz

Dear Mr. W---:

Your letter dated March 5, 1991, in which you request an exemption from the imposition of the California use tax on the rental payments on your lease of a Mercedes Benz has been assigned to me for a response.

According to your letter, you and your wife entered into the lease agreement while you lived in a home that you owned in ---, Texas. Your two older sons attended the University of Texas, and your youngest son attended public schools. You had lived in Texas since 1984 and had no reason to believe that you would be moving to California shortly after entering into the lease agreement. You do not state when you executed the lease agreement or when you moved to California, but we infer from your letter that you moved to California within 90 days after you entered into the lease. You assert that you paid full Texas sales tax on the price of the Mercedes while you were a Texas resident.

You further assert that this was not a situation where you intended to avoid taxation by "purchasing" the automobile in one state with the intention of using it in another. Rather, it was a situation, common in American business, where corporate managers must make moves between states with little advanced notice and little control over the timing and circumstances of the move.

Revenue and Taxation Code section 6201 imposes an excise tax, commonly referred to as the 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 determining whether use tax should be imposed upon your rental payments, we must determine whether your lease of the Mercedes is a purchase, whether the lease is a purchase for use of the Mercedes in this state, and whether you are entitled to a credit for the sales tax imposed upon the lessor by the State of Texas.

“Purchase” means and includes any lease of tangible personal property in any manner or by any means whatsoever, for consideration. Rev. & Tax Code § 6010(e). There are several exceptions for certain types of leases, one of which we will discuss below. Assuming, however, that your lease was a purchase, the next question is whether the lease was a purchase for use in this state.

Revenue and Taxation Code section 6010.1 provides:

“The possession of tangible personal property by a lessee... is a continuing purchase for use in this state by the lessee as respects any period of time the leased property is situated in this state, irrespective of the time or place of delivery of the property to the lessee....”

Thus, by statutory definition a lease is a purchase for use in this state by the lessee while the leased property is located in California. It is immaterial how long the lessee has leased the property in another state. While he or she leases the property in California, the lease is subject to use tax unless the lease is not a purchase or a special exemption applies to the lease.

Revenue and Taxation Code section 6010(e)(5) is the tax paid exception for leases. It provides that a lease of tangible personal property is not a purchase if the property is leased in substantially the same form as acquired by the lessor and the lessor has paid California sales tax reimbursement or California use tax measured by the purchase price.

Regulation 1660(c)(8) extends this exception to certain situations where the lessor has paid sales or use tax or sales tax reimbursement to another state prior to leasing the property in that state. For the exception under this regulation to apply, the lessor must be subject to California use tax on the leased property when it enters this state. To be subject to use tax, the lessor must have purchased the property for use in this state. Under Regulation 1610(e)(2) prior out-of-state use of a vehicle in excess of 90 days from the date of purchase to the date of entry into California (exclusive of time of shipment to California or time of storage for shipment to California) creates a presumption that the vehicle was not purchased for use in California. Therefore, if a lessor purchases the property and uses it more than 90 days before it enters California, the lessor is not subject to California use tax and this exception cannot apply.

If the lessor purchases a vehicle outside of California and the vehicle is brought into California within 90 days after its purchase, under Revenue and Taxation Code section 6248 and Regulation 1610(e)(1) there is a presumption that the property was purchased for use in California. In that case, the lessor may receive a credit for out-of-state retail sales or use tax or reimbursement therefore if he makes a timely election to measure any tax liability for the property by its purchase price. Regulation 1660(c)(8). The election must be made on a timely filed sales or use tax return for the quarter during which the property was brought to California if the out-of-state tax is less than the tax imposed in California. If the out-of-state tax exceeds or equals California's tax, the lessor will be deemed to have made a timely election, and the rental receipts will not be subject to tax. Regulation 1660(c)(8).

Texas imposes a motor vehicle retail sales tax on every sale of a motor vehicle in that state. The tax, which is six percent of the total consideration, is an obligation of and must be paid by the purchaser. Texas Tax Code § 152.021. Motor vehicles which are purchased by a lessor to be leased are subject to motor vehicle sales or use tax based upon the purchase price of the motor vehicle to the lessor. Such tax is due from the lessor at the time of purchase. 34 T.A.C. § 3.79. Motor vehicles are purchased for lease if the agreements granting possession grant possession for more than 180 days. Texas Tax Code § 152.001(5). (The Texas motor vehicle use tax is imposed on rental payments for motor vehicles purchased for rent i.e., for agreements granting possession for 180 days or less.)

In your case, the California use tax will not be imposed upon rental payments if (1) the lessor paid Texas motor vehicle sales tax upon its purchase of the automobile, (2) the lessor brought the automobile to California, and (3) at the time you registered the automobile you resided in a county in California where the total tax rate for use tax was six percent. If the county where you resided had a rate higher than six percent, the use tax will not be imposed upon you if the first two requirements are met and the lessor made a timely election by filing a sales and use tax return reporting the use tax due less the credit for the Texas tax. (If you brought the automobile to California during 1990 or during December 1989, the use tax exceeded six percent in all counties because of the earthquake relief fund.) You will have the burden of showing that your lease is not a purchase under the tax paid exception.

If your lease is a purchase, the final question is whether you are entitled to a credit for the Texas motor vehicle sales tax. Revenue and Taxation Code section 6406 provides that a credit shall be allowed against, but shall not exceed, the use taxes imposed on any person by reason of the storage, use or other consumption of tangible personal property in this state to the extent that the person has paid a retail sales or use tax, or reimbursement therefore, imposed with respect to that property by any other state prior to the storage, use or other consumption of the property in this state.

After reviewing the Texas statutes and regulations relating to the motor vehicle sales and use tax, we have concluded that you are not entitled to this credit. The sales tax was imposed upon and presumably paid by the lessor who was the purchaser of the vehicle. Although you state that you paid full Texas sales tax on the price of the vehicle, we assume that you mean that you paid the lessor, pursuant to the lease agreement, an amount equal to the sales tax upon the lessor, not upon you. Therefore, you have not paid a retail sales tax for which you can claim a credit.

Nor did you pay sales tax reimbursement as that term is used in California sales and use tax law. Sales tax reimbursement is not a tax, but is an amount equal to the sales tax the retailer must pay to the state, and which, by contract, is added by the retailer to the sales price to be paid by the purchaser. In your case, the transaction which gave rise to the imposition of the Texas motor vehicle sales tax was the sale of the Mercedes Benz to the lessor. You were not a party to that sale. Whatever the lessor may have labeled in your lease agreement as "sales tax" was just part of the consideration you were paying under the lease, and the lessor was merely passing his costs along to you. The "sales tax" charge was not sales tax reimbursement.

If you have any further questions, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cl

cc: Out-of-State District Administrator
Santa Rosa District Administrator
Mr. Glenn A. Bystrom
Mr. Donald J. Hennessy