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**STATE BOARD OF EQUALIZATION**

April 14, 1970

Dear Mr.

Thank you for the additional comments in your letter of April 3, 1970 regarding the "T" problem.

Since you will be forwarding me some additional information which you will receive from "F" or "B", I have limited the following discussion to your lease question.

The situation involved is where a lessor of equipment (leased after August 1, 1965), who had been collecting use tax on rental receipts, transfers the equipment to a purchaser who takes the property subject to the lease and who thereafter continues to lease the property to the lessee and collect use tax measured by the rentals. I agree with your conclusion that the transfer of title to the property is exempt from sales tax as not constituting a retail sale, i.e., it is a sale for resale.

The question you raise is whether the sale would be regarded as being within the lessor's "regular course of business" and, therefore, not a use within the meaning of Section 6009 or Ruling 70 (c) (3) (C).

As you relate, it was my tentative conclusion that the transfer of the lease property (whether it be a single item or bulk sale) would be regarded as being a sale in the lessor's regular course of business. After considering this problem further, my opinion remains the same. Accordingly, the transfer of title by the lessor will be regarded as a sale for resale and not subject to either sales or use tax.

It should be noted that if the new lessor was going to use the property himself, i.e., he was going to cancel the lease, the sale between the assignor and assignee would be subject to sales tax as any other retail sale.

Very truly yours,

Glenn L. Rigby  
Tax Counsel

GLR: It [lb]