



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-5550

August 5, 1965

Dear Mr. ---:

This is in reply to your letter of August 2, 1965, asking a number of questions concerning the application of the new law, operative August 1, 1965, with respect to the application of sales and use taxes to leases of tangible personal property. Answering your questions in order, we advise:

1. The intention of the Legislature, in our opinion, was to afford relief from the added economic impact of the extension of the tax to leasing to those who had become previously bound in all respects to perform fixed obligations for fixed periods under prior existing agreements. Thus, where all elements of a lease contract have been fixed by the parties prior to August 1, 1965, and all terms and conditions, including the types, models, descriptions, quantities, and rental terms, etc., have been fully contracted, we will consider that the leasing of the property so designated is within the protection of the so-called "grandfather clause," § 6006.3. If these conditions are present even though the lease has not been formally signed, as mentioned in your question, we will, nevertheless, consider that the lease was executed or entered into prior to August 1.

2. As long as the lessee has the option to renew a lease entered into prior to August 1, 1965, the exercise of such option constitutes, in our opinion, as a renewal, and, consequently, rentals received subsequent to such renewal would be subject to the tax.

3. Except in the cases of leases to the United States Government, to banks, or to insurance companies, the lessee is liable for payment of the use tax on the lease payments which the lessor is required to collect from the lessee at the time rentals are paid by the lessee under the lease. Whether or not the amount of the tax is separately stated in the lease document would be immaterial. The lessee is under a legal liability for the tax in any event.

4. Inasmuch as leases are continuing sales under the terms of the new law, it is our opinion that the amount designated as interest is not excludable from gross receipts with respect to which the tax applies. The lessee pays a certain amount of money for the merchandise and this, in our opinion, constitutes the measure of the tax.

5. There would be a tax due upon the exercise of an option to buy by the lessee and the tax would be due upon the specified selling price, i.e., amount paid by the lessee upon exercise of the option to purchase.

6. Upon the exercise of an option to buy, credits for prior lease payments upon which tax has been paid, may be allowed to the extent indicated in the paragraph immediately preceding the concluding paragraph of ruling 70, copy enclosed. You will note that there is no provision for a credit when the property was purchased with tax paid on the purchase price.

7. The lessor is required to pay tax on the amounts of rent which it actually collects prior to the assignment or sale of the lease to the bank. Thereafter, if the assignment or sale is without recourse on the lessor, the bank becomes in effect the lessor and must collect and pay the amount of the tax upon the rental receipts which it receives.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb
Enclosure

cc: --- -- District Administrator