STATE OF CALIFORNIA

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STATE BOARD OF EQUALIZATION
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March 4, 1994

Mr. L--- E. C---
XXXX Avenue --- ---. Suite XXX
--- ---, California XXXXX

RE: C--- R--- Association
"Tax Break" Promotion

Dear Mr. C---

I am responding to your letter to me dated December 17, 1993 regarding your request for advice as to whether your clients could hold a "tax break" promotion. I apologize for my lateness. I have only just returned from court appearances in San Diego.

You indicate that you represent the C--- R--- Association, an association of approximately 600 equipment rental centers throughout the United States. Your clients would like to hold a promotion on April 15 whereby all equipment rentals would be without tax.

OPINION

The lease (or rental) of tangible personal property in California is a continuing sale unless that property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax measured by the purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1; Reg. 1660.) If the lease is a continuing sale under this definition, that lease is subject to use tax measured by rentals payable unless it is specifically exempted by statute. (Reg. 1660(c)(1). Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) Where the lease is treated as a sale, but not a sale at the inception, the lessor may either pay the use tax measured by the sales price up front or may elect to purchase the item ex tax and pay use tax measured by the rental receipts as to payments are made. (§§ 6010(c)(5) & 6011(b); Reg. 1660 (c)(1).) The lessor is treated as the retailer of the property and must collect the use tax from the lessee. (§ 6203(c); Reg. 1660(c)(1).)

You state that when we spoke on the phone I indicated that your clients would not be seeking tax reimbursement from their customers. I must have been unaware of the business your

clients were in. The only tax which could apply to your clients' rental transactions is use tax which they must collect from their customers or owe a debt to the state in an equivalent amount. (§ 6204.) Section 6205 provides as follows:

> "It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the [use] tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded."

Therefore, if your clients rent any equipment for which they paid sales tax reimbursement or use tax at the time that they purchased it and which they are renting in substantially the same form as acquired there is no tax on that rental at all. However, if, on a given piece of equipment, they did not pay such tax up front or have substantially modified it, they must report tax on each rental of it measured by the rental payments. Section 6205 forbids them to advertise that they will not collect or absorb the use tax if such is due. There is no such prohibition for sales tax.

For your information, I have included a copy of Regulation 1660. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Enclosure: Reg. 1660