



STATE BOARD OF EQUALIZATION

February 5, 1987

M--- W--- N---
Assistant Vice President
Corporate Tax Department
W--- Company
XXX --- Street
--- ---, CA XXXXX

Re: Taxation of various charges under leases
SZ -- XX-XXXXXX

Dear Ms. N---:

Your letter dated December 29, 1986 to Assistant Chief Counsel Gary Jugum has been referred to me for response. You list several charges made in connection with your leases of automobiles and ask whether those charges are subject to tax. Your descriptions of the charges and my conclusions are set forth below.

"A. Termination/Disposition fee – assessed upon termination of the lease whether terminated early or upon schedule."

Assuming that this fee is related to the cost incurred in disposing of the leased vehicle upon termination of the lease, as specified by subdivision (c)(1)(D) of Regulation 1660, amounts paid under this provision are not subject to tax.

"B. Excess Mileage Fee – assessed for excess miles driven by lessee over a predetermined standard.

"E. Renegotiation Fee – assessed at the time the lessee signs a new lease agreement covering the same vehicle under a prior agreement. This is a flat rate documentation fee.

"G. Documentation Fee – assessed at the time the lease is signed as a fee for processing the lease.

"H. Assumption Fee – assessed if lease is assigned by the lessee to another party.

"I. Deferral Fee – assessed if lessee wishes to extend the lease for a short period of time without signing a new lease agreement."

These are all payments required by the lease which are not otherwise excludable from taxation. Therefore, all these charges are subject to tax. (Reg. 1660(c)(1).)

"C. Excess Wear and Tear Fee – assessed for costs required to return the automobile to good operating order and condition."

Assuming this fee is required to repair or refurbish the vehicle after a default by your lessee, or is a cost incurred in disposing the vehicle upon termination of the lease, the fee is not subject to tax. (Reg. 1660(c)((1)(B) & (D).)

"D. Late Charges – assessed for late payment of the monthly lease payment or for failure to return the vehicle timely upon termination of the lease."

A payment made by your lessee for failing to pay his rental payment when due is not subject to tax. (Reg. 1660(c)(1)(E), Business Taxes Law Guide ("BTLG") Anno. 330.3425 (6/13/79).) A payment made by your lessee for failing to return the vehicle to you when due is a charge for use of the vehicle and is subject to tax. (Reg. 1660(c)(1).)

"F. Collection Charges – Upon termination of the lease, the lessee is to return the vehicle to the place specified by the lessor. If the vehicle is not so returned, the lessee reimburses the lessor for the costs of moving the vehicle to that place."

A charge for your lessee's failure to return the vehicle to the location you specify is subject to tax as part of the payments required by the lease. (BTLG Anno. 330.3180 (1/10/68).)

"J. "DMV Fees and Penalties – reimbursement to lessor for fees charged by DMV upon sale of the vehicle after lease termination."

Reimbursement you receive from your lessee for fees and taxes you actually pay to the DMV are not subject to tax. (Rev. & Tax. Code § 6011(c)(8), BTLG Anno. 330.3600 (8/26/69).) Reimbursement for penalties directly related to these taxes and fees are also not subject to tax.

If you have further questions, feel free to write us again. If you do so, please included representative lease provisions related to your questions.

Sincerely,

David H. Levine
Tax Counsel

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