

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-5550

January 4, 1972

Mr. H. C. B---  
Manager  
Tax Department  
The N--- C--- R--- C---  
--- & --- Streets  
---, --- XXXXX

Dear Mr. B---:

SZ --- XX XXXXXX

Your letter of October 22, 1971, addressed to our --- office, has been referred to this office for reply. You raise a question as to the application of tax to certain transportation charges made by N--- on equipment rentals.

As you are no doubt aware, California law provides an exclusion from the measure of tax liability for "separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser...provided, that if...the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the purchase of the property is made." [Rev. & Tax. Code Sec. 6011.]

Our regulation 1628 "Transportation Charges" provides that:

"Property is sold for a delivered price when the price agreed upon in the contract of sale includes whatever cost or charge may be made for transportation of the property directly to the purchaser.... Property is not sold for a delivered price when the price is agreed upon and to this price is added a separately stated amount representing the cost or charge for transportation of the property directly to the purchaser and any increase or decrease in the actual cost of transportation is borne by or credited to the purchaser."  
[Para. (b)(1).]

“When a sale is made by lease, the sale occurs upon the transfer of possession or granting of the right of possession of the property by the lessor to the lessee or other person at his direction.”  
[Para. (b)(3)(B).]

In your letter you indicate that, “In the particular type of charges involved which we classify as an ‘agreed freight charge,’ we are merely being reimbursed by our customers through the terms of the contract for this additional cost of doing business in the various states....” Several sample rental contracts have been forwarded to us for our consideration

According to the “Terms and Conditions” of your “Full Service Equipment Rental Contract”:

“Lessee agrees to pay, in addition to the rental charges set forth, a freight charge at the rates stated in N---’s published Freight Charge Schedule for equipment of the type leased in effect on the date of delivery and installation of the leased equipment, such charge to be both from and to N---’s factories, plus any additional costs of local delivery and handling not included in those rates. Such charge shall be invoiced and paid with the first rental payment due hereunder. In the event of exercise by lessee of its option to purchase, that portion of the freight charge so paid representing the charge for return of the equipment to N---’s facilities shall be refunded to lessee. [Para. 14.]

“The term of the lease shall commence upon delivery and installation of the leased equipment.” [Para. 2.]

In our opinion this contract is not a delivered price contract. The price of the equipment delivered is not fixed by the rental agreement but may fluctuate, up or down, depending upon the fluctuation in N---’s Freight Charge Schedule, which presumably reflects changes in actual freight costs. The delivery charge would thus be excludable from the measure of tax, assuming, as appears to be the case, that delivery is made by other than the facilities of N---. On the same assumption, local delivery charges would be excludable from the measure of tax.

Tax is properly applicable to return transportation charges since the charges are mandatory under the agreement. There is no specific statutory exclusion for return transportation charges.

Under the “Computer Use and Service Agreement,” tax would not apply to transportation charges if delivery were by other than facilities of N---, but tax would apply if N--- delivered the equipment by its own facilities. [Para. 1, 2, 7.] Tax would not apply on return transportation charges.

Mr. H. C. B---  
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SZ --- XX XXXXXX

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Under the Electronic Data Processing Equipment Lease Contract," the local delivery charges specified in paragraph 7 are not subject to tax, provided delivery is by other than N--- facilities.

Very truly yours,

Gary J. Jugum  
Tax Counsel

GJJ/ab

bc: Out-of-State – District Administrator

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