

**M e m o r a n d u m****570.1603**

To: Los Angeles District - District  
Principal Auditor (JTQ)

Date: September 18, 1970

From: Tax Counsel (JKM) – Headquarters

Subject: V--- C---  
XXXX --- ---  
---, CA XXXXX

SR -- XX XXXXXX

This is in response to your memorandum dated June XX, 1970, requesting that we advise as to the availability of credit for tax paid to the State of Arizona by V--- Corporation as a result of its lease from an Arizona lessor of mobile equipment, which it used both in Arizona and California.

Arizona Revised Statutes, Title 42, Chapter 8, Article 1, imposes the Arizona Transaction Privilege Tax. Section 42-1309 provides for the levy and collection of privilege measured by the amount or volume of business transactions by persons on account of their business activities, and for all accounts to be determined by the application of rates against gross proceeds of sales in accordance with the schedule as set forth in sections 42-1310 through 42-1315. Section 42(a)(2) provides that the tax imposed by section 42-1309 shall be levied and collected from every person engaging or continuing within the State of Arizona in the business of leasing or renting tangible personal property for a consideration in an amount equal to 2 (3) percent of the gross proceeds of sales.

The Arizona tax has been characterized by the Arizona Supreme Court as a tax upon the privilege of engaging in business in Arizona, measured by the amount or value of business done within the state of whatever characterization rather than a sales tax as such (State Tax Commissioner v. Quebedeaux Chevrolet, 71 Ariz. 280). The taxable event is the engaging in business within the state, and gross proceeds charged by lessors in the business of leasing tangible personal property, including mobile equipment, are subject to tax, apparently without regard to where the equipment is located. We presume that V--- Corporation has paid Arizona tax reimbursement to its Arizona lessor throughout the lease period.

Sales and Use Tax Law section 6406 provides, in part, that a credit shall be allowed against the taxes imposed by Chapter 3, etc., to the extent that a person has paid a retail sales or use tax, or reimbursement therefore, imposed with respect to that property by any other state prior to the storage, use or other consumption of that property in this state. A credit, otherwise permitted, shall not be allowed against taxes which are measured by periodic payments made under a lease, to the extent that the taxes imposed by any other state were also measured by periodic payments made under a lease for a period prior to the storage, use, or other consumption of the property in this state.

As a business privilege tax, the Arizona tax would qualify as a retail sales tax for purposes of section 6406 (People v. Herbert's of Los Angeles, 3 Cal.App.2d 482), and payment of reimbursement therefore would constitute payment of sales tax reimbursement. As the Arizona tax is imposed upon every person engaging within the state in the business of leasing or renting tangible personal property, it is imposed prior to the storage, use, or other consumption of the equipment in California. Assuming, as we have, that it has paid Arizona tax reimbursement to its Arizona lessor throughout the lease period, V--- Corporation would thus be entitled to the credit provided by section 6406 against use tax imposed as a result of its use of the equipment here to the extent permitted therein, which is, to the extent that it paid Arizona tax reimbursement during the periods in which the equipment was in use here. V--- Corporation is not entitled to credit for payments of Arizona tax reimbursement for periods in which the equipment was not in use here.

The July 17, 1969, letter upon which Ca. Tax. --- Ann. No. 1925.73 is based has been modified by a December 22, 1969, memorandum. Revision or deletion of Ann. No. 1925.73 has been suggested and the suggestion is presently under consideration.

JKM:sm

cc: --- -- Subdist. Admin.