

**STATE BOARD OF EQUALIZATION**

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Executive Director

September 10, 1996

Re: Collection of Tax in Conjunction with Vehicle Lease

Dear _____,

This responds to your letter dated June 10, 1996, in which you pose the following hypothetical:

"The dealer sells a vehicle to a California non-dealer lessor. The California lessor provides the dealer with a resale certificate and the dealer has no reason to believe that the vehicle will be used other than for the purpose of leasing. In fact, the dealer has every reason to believe the vehicle will be so used. The vehicle is registered without the lessee's name and address as contemplated in Vehicle Code § 4453.5(c) and the dealer believes the leasing company is filing the separate lessee name and address information required under Vehicle Code §4453.5(c)."

Vehicle Code section 4453.5(c) provides:

"The lessor shall provide the address, or the name and address, of the lessee on a form prescribed by the department [of motor vehicles] in all cases where the information is not on the registration card and ownership certificate. Information received under this subdivision shall be used only for law enforcement and shall be available only to law enforcement officials at their request."

You request confirmation of your opinion that the dealer is not required to collect or remit sales or use tax under these circumstances.

As you know, retail sales of tangible personal property are subject to sales tax. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When the sales tax does not apply, use tax applies to the use of tangible personal property purchased for use in this state. (Rev. & Tax. Code §§ 6201, 6401 .) When a person purchases property for resale and makes no use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the sale to that person is not subject to sales or use tax. Thus, if the dealer sold the vehicle for resale, tax does not apply. Otherwise, tax does apply to the sale of the vehicle by the dealer.

The burden of proving that a sale is not a sale at retail is upon the person who makes the sale unless he takes a resale certificate from the purchaser that the property is purchased for resale. (Rev. &

Tax. Code § 6091.) The resale certificate relieves the seller from liability for sales tax only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who hold a valid seller's permit. (Rev. & Tax Code § 6092.) By statutory definition, a lease is a sale or purchase. (Rev. & Tax Code §§ 6006(g), 6010(e).)

We assume the non-dealer lessor possesses a valid seller's permit and is properly using the resale certificate. We also assume that your reference is to a vehicle within the meaning of Revenue and Taxation Code section 6272 and not mobile transportation equipment as defined in Revenue and Taxation Code section 6023. According to your letter, the dealer takes a resale certificate from a non-dealer lessor. In that case, it appears the purchaser is buying for resale property of a kind not normally resold in the purchaser's business. Under Regulation 1668(d), for the dealer to take the resale certificate in good faith, he should require that the resale certificate contain the non-dealer lessor's statement that the vehicle is being purchased for resale in the non-dealer lessor's regular course of business.

The Board has previously taken the position that a dealer may sell a vehicle to a leasing company for resale when the dealer obtains a valid resale certificate from the lessor, and the vehicles are registered as prescribed by section 4453.5 of the Vehicle Code in either the name of the lessor or the lessor/lessee jointly. This and other information is contained in Tax Tips Pamphlet No. 34, which is enclosed for your future reference. See also, Sales and Use Tax Regulation 1610, subdivision (d).

Revenue and Taxation Code section 6596 provides the only basis for relief from tax if a taxpayer fails to pay tax based on reasonable reliance on written advice from the board. The primary conditions to qualify are that the request for opinion must be in writing and must disclose all relevant facts, including the identity of the taxpayer. Since you have not identified a client and facts from a particular transaction, this opinion does not come within the provisions of section 6596 but rather is simply general advice regarding a set of hypothetical facts.

If you have any additional questions, please feel free to write again.

Sincerely,

Robert E. Thomas
Tax Counsel

RET/cmm
Enclosure