

M e m o r a n d u m**395.0066**

To: _____ Date: August 16, 1984

From: HQ-Legal (ELS)

Subject:

This is in response to your memorandum of July 18, 1984. Your memorandum detailed various transactions entered into by --- and asked that we review the described transactions, along with exhibits pertaining thereto, and render our opinion as to the proper application of the tax. For the sake of convenience, we will reiterate your description of each transaction and then follow each description with our opinion as to how the tax applies.

Transaction No. 1

--- acquired through assignments all rights, title and interest to equipment (office & shop equipment) lease contracts from various leasing companies. Either sales tax or use tax had been paid by the original lessors on the cost of equipment leased. Some contracts were acquired by --- simultaneously at the time the original lease contracts were entered into; some contracts were acquired some months later. (Sample of lease agreements along with assignment agreements are attached as Exhibit A.)

The assignment of office and shop equipment as well as tangible personal property under lease at the time of this transaction were subject to tax based upon the sales price of these items since such assignments were, in fact, sales of the items in question [Reg. 1596(a); Reg. 1595(b); Reg. 1660(c) (9)(A)].

Transaction No. 2

On December 29, 1983, --- sold an undivided 80% of its right, title and interest on these equipment lease contracts to an out-of-state leasing company, --- totaling \$5,600,000 (Exhibit B). A security interest was granted to the buyer in the remaining 20% per. security agreement (Exhibit C).

We assume that all of the equipment transferred was located in California at the time the sale occurred and that none of the leases were continuing sales and purchases. Under such circumstances, the sale is deemed to have occurred here and tax is due measured by the sales price of the equipment transferred [Rev. & Tax. Code § 6010.5; Reg. 1660 (c) (9) (A); BTLG anno. 540.0280].

Transaction No. 3

On the same date (December 29, 1983), --- sold its --- branch to a ---. Buyer assumed approximately \$9,000,000 of outstanding thrift deposits in exchange for the lease to the business premises, certificate loans and all right, title and interest to certain accounts receivables (these receivables are actually equipment lease contracts similar to those that were sold to --- plus \$300,000 cash for the leasehold improvements, furniture-& fixtures, and a promissory note. (Exhibit D.)

Here again, tax is due based upon the sales price of the tangible personal property transferred.

Your memorandum indicated that, in addition to the foregoing transaction, --- regularly entered into numerous automobile leases which were continuing sales and purchases and, accordingly, --- collected and reported tax based on rental receipts during the period in issue. Also, --- routinely sold checks at retail to its depositors-and reported tax from such sales.

Under the foregoing conditions, you asked whether the recent case of Ontario Community Foundation Inc. etc., et. al. v. State Board of Equalization, 33 Cal.3d 811 would operate to qualify transaction No. 3 as an exempt occasional sale. In our view, the Ontario case, which struck down the unitary business provisions of Regulation 1595, is distinguishable from the case at hand and is not authority for exempting the sale in question as an occasional sale. The Ontario case involved the one-time liquidation sale of hospital tangible personal property which the court found was not held or used by a seller in the course of activities for which it was required to hold a seller's permit. Prior to trial, the hospital conceded liability with respect to tangible personal property sold which had been utilized in the hospital's cafeteria and pharmacy since taxable sales to non-patients had been made in connection with those aspects of its business. Here, --- was in the business, not only of loaning money and retaining deposits, but also .of leasing tangible personal property and making regular sales of checks to its customers.

In our view, --- leasing and check sales activities were clearly not activities separate or separable from its loan and depository activities. It follows, we do not even reach the question of the unitary concept embodied in Regulation 1595 which the Court struck down. Here, the activities regularly engaged in by --- clearly required the holding of a seller's permit and, accordingly, the occasional sale exemption does not apply [Rev. & Tax. Code § 6006.5(a) ; Reg. 1595(a) (1) and (b) (1)].

ELS:rar