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April 15, 1994

Mr. E--- -. S---
 K--- P--- M---
 --- --- Center
 --- ---, CA XXXXX

Dear Mr. S---:

This is in reply to your January 7, 1994 letter regarding the application of sales and use tax to the sale and subsequent lease of off-road construction equipment under the following facts you provided:

"The Taxpayer operates an off-road construction equipment lease business as a sole proprietor. The equipment utilized in this business was acquired tax-paid. Subsequent rentals to related entities were not subject to tax.

"The Taxpayer is planning to contribute all of the assets of the sole proprietorship, subject to its liabilities into an existing shell corporation for legal liability reasons. This was accomplished before December 31, 199X by the Taxpayer contributing 100% of the sole proprietorship's assets into an existing corporation (C--- E---, Inc.) which is also owned 100% by the Taxpayer. The equipment will continue to be leased to related entities."

By your reference to "off-road" construction equipment, we assume you mean the equipment does not consist of vehicles required to be registered under the Vehicle Code. We understand that M--- F--- does not hold a seller's permit, because his leases of the equipment are not sales or purchases, that is, his leases are of tangible personal property leased in substantially the same form as acquired by Mr. F--- as to which he has paid sales tax reimbursement or timely paid use tax measure by the purchase price. (Rev. & Tax. Code §§ 6006, subd. (g)(5) and 6010, subd. (e)(5).) Given this information, you asked whether tax applies to the transfer of the assets into the corporation and whether tax applies to the subsequent leases by the corporation.

Revenue and Taxation Code section 6367 provides an exemption from sales tax for the occasional sale of tangible personal property. Section 6006.5 defines "occasional sale" at subdivision (a) to include a sale of property not held or used by a seller in the course of activities for which he or she is required to hold a seller's permit. Assuming that Mr. F--- is truly not required to hold a seller's permit in the course of his lease business, the sale of the equipment to the corporation is an occasional sale as defined in subdivision (a) of 6006.5, and the sale is exempt from sales tax under Section 6367.

Sales and Use Tax Regulation 1660, Leases of Tangible Personal Property - In General, provides at subdivision (b)(1)(E) that "sale" and "purchase" do not include a lease of tangible personal property leased in substantially the same form as acquired by a transferor as to which the transferor acquired the property in a transaction that was a retail sale with respect to which the transferor has paid sales tax reimbursement or timely paid use tax measured by the purchase price. The lease will qualify for the exclusion if the property is acquired in a transfer of all or substantially all of the tangible personal property held or used by the transferor in an activity or activities not requiring the holding of a seller's permit and the ownership of the tangible personal property is substantially similar after the transfer.

Given that C--- E--- Company will acquire the equipment in a transfer of all of the tangible personal property held or used by M--- F--- in his lease activities and the ownership is substantially the same after the transfer, tax does not apply to the leases of the equipment by C--- E---.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:plh

cc: --- --- District Administrator - --