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July 24, 1979

This is in response to your June 29, 1979, letter concerning the propriety of assessments of lessors of personal property when the lessees of such property are insurance companies, and particularly, the propriety of an assessment of personal property of A Company which is leasing personal property to the Na Company of California, an exempt insurance company.

Assessors Handbook 571, The Appraisal of Equipment, Inventory and Supplies, sets forth the general rule that personal property leased to banks and insurance companies isn't entitled to the exemption accorded the personal property owned by such institutions, and that such property should be assessed to the lessor (p. 89). Assessors Handbook 503, Management of the Business Property Program, notes the exception to the rule, namely, that personal property leased to a bank or insurance company is exempt if the bank or insurance company is the equity owner, even though the agreement between the lessor and the bank or insurance company is denominated a lease (pp. 83 & 84). This is merely another way of stating that where "lease" agreements are, in fact, conditional sales contracts, bank and insurance company "lessees", who are actually equitable owners rather than lessees, should not be assessed.

With respect to the A Company and H Company of California Lease Agreement then, determinative is whether the Lease Agreement is, in fact, a lease, in which case the property should be assessed to A , or whether it is, in fact, a conditional sales contract, in which case H is the equitable owner and hence, the property is exempt. In this regard, pertinent lease provisions are as follows:

“THIS LEASE AGREEMENT Made this 1<sup>st</sup> day of May, 1972, between  
\_\_\_\_\_ A \_\_\_\_\_ company, hereinafter called “Lessor”, and N  
\_\_\_\_\_ Company of California, hereinafter called ‘Lessee’.

“1. Lease

“Lessor hereby leases to Lessee and Lessee hereby rents from Lessor the automobiles described in Schedule 1 attached hereto, together with any other automobiles, equipment and other personal property described in additional schedules, numbered consecutively, which may hereafter be attached hereto or incorporated herein by reference, all hereinafter referred to as the ‘leased property’, upon the terms and conditions set forth in this agreement, as supplemented with respect to each item of leased property by the terms and conditions set forth in the appropriate schedule identifying such item of leased property... all of the terms and conditions of this agreement shall govern the rights and obligations of the Lessor and Lessee...

“2. Term

“The term of this Lease respecting each item of leased property commences on the date said item is delivered to Lessee. The term of this Lease ends on the date designated in the schedule describing such items.

“3. Rent

“The rent from each item of leased property described in any schedule attached hereto or incorporated herein shall be the amount designated in the schedule. Lessee shall pay Lessor said rent in advance...

\* \* \*

“5. Repairs

“Lessee, at its own cost and expense, shall keep the leased property in good repair, conditions and working order...

“6. Loss and Damage

“Lessee hereby assumes and shall bear the entire risk of loss and damage to the leased property from any and ever cause whatsoever...

\* \* \*

“7. Option to Sell or Purchase

“At any time during the term of this Lease, upon the giving of thirty (30) days written notice, Lessee shall have the option of terminating this lease agreement in whole or in part. However, in such event the Lessor has the right to require Lessee to purchase any item or items terminated from the Lease at a price equal to the then depreciated value of such item or items.

“At any time during the term of this lease upon the giving of a thirty (30) day written notice, Lessor shall have the option of terminating this lease agreement in whole or in part. However, in such event the Lessee has the right to require Lessor to sell any item or items terminated from the Lease to Lessee at a price equal to the then depreciated value of such item or items.

“The term depreciated value of any item means the net cost to Lessor of such item reduced by depreciation of such item on lessor’s books in accordance with generally accepted accounting principles.

“8. Surrender

“On the expiration or earlier termination of this Lease with respect to any item of leased property, Lessee shall (unless Lessee has paid Lessor in cash the depreciated value of such item) return the same to lessor in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted.

“9. Insurance

“Lessee shall keep the leased property insured against all risks of loss or damage from every cause whatsoever...

\* \* \*

“13. Ownership

“The leased property is and shall at all times be and remain the sole and exclusive property of Lessor...

\* \* \*

In our view, the Lease Agreement is a lease rather than a conditional sales contract, and the property should be assessed to A\_\_\_\_\_. Initially, the Agreement is in the form of a lease, with A\_\_\_\_\_ leasing and N\_\_\_\_\_ renting the particular personal property, and N\_\_\_\_\_ is paying A\_\_\_\_\_ rent pursuant to a specific schedule (Paragraphs 1 and 3). On the expiration or termination of the Lease, N\_\_\_\_\_ is to return the leased property to A\_\_\_\_\_ (Paragraph 8), and the leased property was and is to remain the

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property of A \_\_\_\_\_ (Paragraph 13). Such provisions are indicative of a lease, not a conditional sales contract and thus, N \_\_\_\_\_ is a lessee, not an equity owner.

Also, that the property was and continues to be owned by A \_\_\_\_\_ is evidenced by paragraph 7: either A \_\_\_\_\_ or N \_\_\_\_\_ may terminate the Agreement, in which case the non-terminating party has the option to sell, in the case of A or buy, in the case of N \_\_\_\_\_, the property at an agreed-upon price. Until the exercise of such an option, there is no transfer of ownership of the property to N.

Finally, that the property is capitalized on the A \_\_\_\_\_'s books and that it is depreciated for income tax purposes and reported to the Internal Revenue Service as owned by A \_\_\_\_\_ support the conclusion that the property was continues to be owned by A.

While paragraph 5 requires National to keep the property in good repair, while paragraph 6 requires N \_\_\_\_\_ bear the risk of loss and damage to the property, and while paragraph 9 requires N \_\_\_\_\_ to keep the property insured against risk of loss or damage, such are matters of contract between the parties and do not establish any ownership interest in N \_\_\_\_\_.

Very truly yours,

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