

335.0000 LEASES OF MOBILE TRANSPORTATION EQUIPMENT—Regulation 1661

335.0003 Aircraft Purchased Out-of-State. A person purchases an airplane outside California and enters California in less than ninety days from the date of the delivery of the plane. [See note below.]

(a) It is presumed that the purchase was made for use in California, and use tax applies to the purchase price of the plane unless the use of the plane will be limited to leasing. If so, the use tax liability of the purchaser may be paid measured by the fair rental value of the plane if the purchaser makes a timely election to do so.

A person purchases an airplane outside California and uses it more than ninety days prior to its first entry into California.

(b) The airplane is regarded as not having been purchased for use in California and use tax does not apply. Since the lease of MTE is not a sale pursuant to Revenue and Taxation Code section 6006 (g)(4) but rather is regarded as use by the lessor, and since use tax does not apply to the purchaser's use of the plane in California, use tax also does not apply to the purchaser's lease of the plane. 10/25/89; 5/15/91. (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

335.0004 Barge Used as Ferry Dock. A barge, approximately 1122 by 522 in size, will be leased to a city for twelve months to be used by the city as a ferry dock and a passenger loading platform. The lease with the city is for three months with options over the next twelve months. If the city does not terminate the lease, it will own the barge at the end of the lease term.

Based on the use of the barge, it will be considered an accessory to the pier and perform a function directly related to that pier. However, since the transaction with the city is a true lease and not a sale at inception, it seems unlikely that parties to the lease intend that the barge remain permanently attached during the period of the lease. Therefore, the barge would be classified as mobile transportation equipment and not real property. The lessor would have the choice of paying tax measured by its purchase price or the fair rental value measured by the rental paid by the city. The election to pay tax on fair rental value must be made with the filing of a timely return for the quarter in which the barge was first leased. 3/20/90.

335.0004.700 Cargo Containers. X acquires tangible personal property in California to be incorporated into ocean going cargo containers by a manufacturer in Mexico. The Mexican manufacturer is a maquiladora facility owned by X. X retains title to the property throughout the manufacturing process in Mexico. X then sells the containers to a leasing company and directs the manufacturer in Mexico to send the containers directly to the leasing company in California.

At the time the leasing company purchases the containers from X, it has already leased them to a specific lessee. Upon delivery to that lessee, the containers are filled with freight and then loaded onto ships having foreign destinations. The containers leave California within thirty days after the date of delivery to the leasing company.

Even though X purchases the raw materials in California, the containers are not manufactured in California so they do not qualify for the exemption provided by section 6388.6. Reusable cargo shipping containers are mobile transportation equipment and the lessor is regarded as the consumer. Since the sale to the lessor occurs outside California, sales tax does not apply. Since the containers are first filled in California, however, the first functional use is made in California. Therefore, the lessor is regarded as purchasing the container for use in California and tax applies to the purchase price unless the lessor makes a timely election to pay its tax liability measured by fair rental value. If it makes such an election, tax applies to the fair rental value whether the containers are inside or outside California. 12/6/91.

[335.0005](#) **Catering Trucks.** Airline catering trucks, designed with a high lift body which are of a type that can be licensed with the DMV for use on public roads and which normally carry persons or property substantial distances are mobile transportation equipment. 9/26/74. (Am. 2000-1).

[335.0009](#) **Classification of Equipment.** The following equipment is classified as mobile transportation equipment. All of the equipment is licensed by DMV and is capable of moving at highway speeds for long distances:

(1) Trailer mounted water purification units. These units are mounted on trailers solely to be transported to the place where the water purification units are needed. The cost of the trailers is less than 18% of the cost of the completed units. However, the trailer units are licensed with the DMV as trailers.

(2) Cement mixers, air compressors, and vehicle engine hoists that are licensed for highway use and pulled behind a vehicle as mobile transportation equipment.

(3) Mobile water chilling units. These involve leases of mobile truck cranes which are capable of moving substantial distances at highway speeds. 4/5/77; 6/17/77; 2/28/78.

[335.0009.700](#) **Collection of Sales Tax from Lessee on Fair Rental Value.** A lessor of Mobile Transportation Equipment (MTE) has elected to pay tax on the purchase price of trucks it leases. The lessor indicates that in the future, it wishes to purchase the trucks ex-tax by issuing resale certificates and then collect "sales tax" from its customers based on the fair rental value. To simplify accounting procedures and to treat customers with consistency, the lessor proposes to charge "sales tax" on all truck rentals whether or not it has previously paid tax on the purchase price of a specific truck. All amounts collected as "sales tax" would be remitted to the state.

The use tax liability on the lease of MTE purchased under a resale certificate is payable by the lessor rather than the lessee. Since the lessor did not make a timely election to pay tax on fair rental value for its existing inventory, the lessor has no election to pay tax measured by fair rental value by collecting further tax from the lessees on the tax-paid trucks. The lessor must abide by the tax consequences of its choice on the trucks it paid tax upon the purchase price. 7/30/90.

[335.0010](#) **Component Parts.** A lessor of mobile transportation equipment who has properly elected to measure his use tax liability by "fair rental value" may properly purchase the repair parts he places on such equipment ex-tax for resale. In such a case the "fair rental value" will be based on the full maintenance rental charge. 7/25/73.

[335.0012](#) **Concrete Pumping Equipment** A corporation, engaged in manufacturing trailer and truck mounted concrete pumping equipment, believes that the concrete pumps are not mobile transportation equipment (MTE) because transportation is not the principal purpose for the trucks. The trucks are to support the pumping equipment and have to be modified to carry the pumping device. The drive shaft has to be replaced with a specialized drive shaft that will operate the pumping equipment as well as the truck. In addition, the equipment is used predominantly off the road and usually travels 50 miles or less between jobs. In summary, the corporation believes that the equipment is not designed for long distance transportation of persons or property at highway speeds.

The concrete pumps are not in themselves transportation equipment. They can be classified as MTE if they are or become a "component part of the trucks upon which they are carried." The pumps are permanently attached to the trucks and remain on the trucks when in use. Trucks are by statute defined as MTE. Once the pump is attached to the truck and becomes a component part of that truck, the pump becomes MTE. In this case, the trucks were capable of traveling at highway speed and were, in some cases, driven across the United States. 8/15/90.

[335.0014](#) **DMV Classification.** The DMV classification of a vehicle is not conclusive as to the Board. 5/28/75.

335.0015 **Debris Boxes.** A taxpayer purchased 20 yard debris boxes ex-tax and leased them to a garbage company. In turn, the garbage company rented them to users for a daily rate which included drop-off, removal and disposal of the contents.

Although the debris boxes do not have attached running gear and are not registered under relevant vehicle codes, they can only be transported on specialized self-loading truck chassis. Each time a debris box is moved, it essentially becomes the body of a dump truck. These debris boxes are “reusable cargo containers” within the meaning of section 6023 and are mobile transportation equipment. The taxpayer owes use tax measured by the purchase price, unless a timely election to pay tax measured by fair rental value was made. 9/14/89.

335.0016.150 **Derrick Barges.** Derrick barges that are 30 or more feet in length are “ships” for purposes of section 6023. However, they are not mobile transportation equipment unless they transport persons or property for “substantial” distances. A barge which is used in constructing wharves, building breakwaters, and dredging harbors generally is moved from jobsite to jobsite carrying equipment. Accordingly, it is mobile transportation equipment. 3/6/85.

335.0016.950 **Election to Report Tax Measured by Rental Receipts.** An engine was first leased in the quarter preceding the third quarter of 1973. The rentals were first reported in the third quarter. The initial rental charges for the engine were not billed or received until the third quarter of 1973.

When it is the normal business practice of a lessor to invoice its lessee for rental charges and to collect rental payments some time after the leased property is furnished to the lessee for use, it is appropriate, in certain circumstances, to recognize this business reality and to regard the lessor’s election to report use tax on fair rental value as having been timely made. The circumstances which would warrant application of this interpretation would be where possession of the leased property is transferred to the lessee within the last part of the lessor’s quarterly reporting period. 3/22/79; 4/24/87.

[335.0016.980](#) **Election to Report Use Tax on Fair Rental Value.** Taxpayer is a seller and lessor of mobile transportation equipment (MTE). The taxpayer buys MTE without paying or reporting tax on its initial cost, choosing instead to report use tax measured by fair rental value of the MTE. In 1990 the taxpayer leased a unit to a California lessee for a five year term. Use tax was properly reported on fair rental value throughout the term of the lease. In 1995, at the end of the lease, the lessee returned the unit to the taxpayer. Three months later, the taxpayer leased the same equipment to a different lessee under a new contract. The taxpayer delivered the equipment to the new lessee’s out-of-state headquarters. Thereafter, the equipment was used outside California and did not enter the state at any time.

When the lessor elects to pay tax measured by fair rental value, the election is irrevocable and the lessor must continue to report tax on that basis whether the MTE is inside or outside of California. Therefore, the taxpayer does not have the option to pay use tax measured by the purchase price at the beginning of the second lease with an offset for the use tax measured by fair rental value which was paid throughout the first lease. Since the taxpayer elected to spread out the payments on its liability and pay on fair rental value rather than on the purchase price, the lessor must continue to pay on fair rental value regardless of the location of the MTE. 5/7/96.

[335.0017](#) **Election to Report Use Tax Based on Sales Price or Fair Rental Value.** A lessor is eligible to report use tax measured by the sales price of the mobile transportation equipment or its fair rental value, but does not know until six months have passed after the mobile transportation equipment first enters the state if the use of this equipment will meet the requirements of the interstate commerce exemption or the principal use is out of state.

The election to measure tax by fair rental value must be made on a timely filed return for the period in which the property is first leased. If the lessor wishes to preserve its election to pay use tax on the fair rental value of the mobile transportation equipment in the event the use in California is subject to tax, the lessor should file a timely return for the period in which the equipment first enters the state and pay tax on

fair rental value. The lessor may then file a claim for refund following six months after the mobile transportation enters the state if the interstate commerce exemption applies or principal use is out of state. 5/6/93.

335.0018 Engines—Aircraft. Aircraft engines which are placed in standby services pending a need for attachment to an airframe are mobile transportation equipment. Accordingly, a lease of an aircraft engine is subject to the provisions of Regulation 1661 upon the initial lease rather than at the time it is placed on the aircraft. 3/25/75.

335.0018.800 Fair Rental Value. In general, the charge made to the customer is “fair rental value” for purposes of determining the measure of tax on leases of mobile transportation equipment. Separately stated charges for delivery and telephone are not part of “fair rental value.” 5/20/96. (Am. M99–1).

335.0019 Feed Wagon. A feed wagon is a vehicle which mixes various feed ingredients while transporting the feed from storage bins to feeding troughs, all of which are on the same property a short distance apart. It does not normally travel on the highway. However, the rental of a feed wagon manufactured by the lessor and mounted on a truck chassis purchased for resale was a rental of mobile transportation equipment because the wagon is capable of transporting property (feed) substantial distances, if necessary. The lessor is thus the consumer of the tangible personal property including any purchased fabrication labor going into the making of the feed wagon. The lease is not a “sale” for sales and use tax purposes. 7/5/78.

335.0021 First Functional Use Out of State. A ready-mix concrete truck was purchased by a lessor outside California. It was first functionally used outside California by the lessee and was so used for over 90 days before entry into California. [See note below.]

The subsequent use of the truck by the lessor in California is not subject to tax. Since the out-of-state lease of the mobile transportation equipment is considered as the lessor’s own use, and not a sale or purchase under the Sales and Use Tax Law, the subsequent lease of such mobile transportation equipment by the lessor in California is not subject to sales or use tax. 9/12/88. (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

335.0025 Gliders. Gliders of a kind flown for sport are not “mobile transportation equipment.” 9/8/78.

335.0030 Hearse. A hearse is included within the definition of mobile transportation equipment. 12/11/72.

335.0041 Interstate Commerce Exemption. Since leases of mobile transportation equipment (MTE) are specifically excluded from the definition of “sale” and “purchase”, a lessor of MTE is always the consumer of the MTE. MTE acquired tax paid may be consumed in any manner chosen by the owner, including leasing it to others, without incurring further tax liability.

The right to the interstate commerce exemption for MTE acquired ex-tax from out of state is not affected by the fact that the owner of the MTE may choose to lease it during the course of the six-month test period(s). If the lessee’s use does not satisfy the requirements of the test, the resulting tax liability is that of the lessor, not the lessee. This is true even if the lessor had made a timely election to report its use tax liability measured by fair rental value and collects reimbursement from its lessee for that tax liability.

(Note: If the lessor wishes to report its tax liability, if any, measured by fair rental value, it must do so with its timely return for the period in which the MTE is first leased, even if the lessor is unsure whether its use of the MTE will qualify for the interstate commerce exemption. If it makes a timely election to pay tax on

fair rental value and thereafter can establish that it qualifies for the interstate commerce exemption, it may file a claim for refund for the amount of tax previously paid.) 8/1/90. (Am. 2000–1).

335.0042 Lease of Aircraft Engines Installed in California. A lease of replacement engines, installed in aircraft within California, which are operated by common carriers, are leases of mobile transportation equipment and do not qualify for the exemption from tax under Revenue and Taxation Code section 6366.1. Engines purchased out of state are subject to use tax measured by the purchase price, unless the lessor makes a timely election to pay use tax measured by the fair rental value which is generally the rental payable. The tax is due on such rental payments whether the property is located inside or outside California during the period of lease. 5/9/90.

335.0043 Lease to Common Carrier After Private Lease. As set forth in Regulation 1593(c)(1), whether a purchaser or lessee of an aircraft is using that aircraft as a common carrier of persons or property, only the use of the aircraft during the first 12 consecutive months commencing with the first operational use of the aircraft will be considered. Thus, a lessor of an aircraft leasing the aircraft to private individuals and reporting tax based upon fair rental value for the first two years from the date of purchase must continue to report tax based upon fair rental value on a subsequent lease to a common carrier. In order for the common carrier exemption to apply, the aircraft must be used in common carriage for more than half of the twelve month test period. The test period commences with the first “operational use” of the aircraft. 11/21/89. (Am. 2004–2).

335.0043.150 Lease of a Component Part. A lease of a component part of an aircraft is not a lease of mobile transportation equipment under Regulation 1661 unless the component part is for use in transportation of persons or property. Thus, a temporary lease of an aircraft engine to a movie studio for use as a wind machine is not a lease of mobile transportation equipment. If the aircraft engine had been purchased under a resale certificate and had been leased to the movie studio (with the lessor collecting use tax from the lessee), and the property was then leased for use on an aircraft, the lessor would owe use tax measured by the purchase price of the engine but would be entitled to a credit for tax paid on the rental receipts basis. 5/6/75.

335.0043.500 Lease of Mobile Transportation Equipment (MTE)—Refund Claim. Under the terms of its lease agreement, a lessor of MTE is required to maintain, repair or alter the MTE and “shall be responsible for purchasing all repair parts and maintenance items for resale to lessee.” The lessor owned and leased the equipment out of state for more than a year before bringing the MTE into California. The lessor then purchased parts used to repair the leased MTE and paid tax reimbursement to the California parts vendors. The lessor filed a claim for refund for the tax reimbursement it paid on the parts in the belief that the parts were purchased for resale to their lessee(s) pursuant to the lease agreement.

Regulation 1661 provides that “with respect to leases of mobile transportation equipment, the sale to the lessor is the retail sale and the lessor is the consumer of the equipment.” The definition of MTE includes “any tangible personal property which is or becomes a component part of such equipment.” Therefore, the lessor is not the retailer of the parts to the lessee; rather, the lessor is purchasing the parts for use in connection with the lease. In addition, only a person who has timely elected to measure the use tax liability by fair rental value may purchase, ex-tax for resale, equipment that becomes a component part of the MTE. (Revenue and Taxation Code section 6092.1.)

Notwithstanding how the transaction is characterized in the relevant lease agreements, the purchase of the repair parts by the lessor is not a purchase for resale under California law. The lessor did not make a timely election to report tax based on fair rental value and therefore could not issue a valid resale certificate to its California vendors. Since the lessor is the consumer, rather than the retailer, of MTE and equipment that becomes a component part the MTE, the lessor cannot claim a refund of tax reimbursement. (Revenue and Taxation Code section 6901.5.) 5/11/06. (2007–1).

335.0043.650 Sale and Purchase Back of Truck Rental Inventory. A taxpayer is in the business of leasing trucks which are mobile transportation equipment (MTE). It currently reports tax on rental receipts (fair rental value). The taxpayer proposes to sell at book value all of its rental truck inventory to a

nonrelated dealer. The taxpayer will then purchase back the trucks at book value and pay sales tax reimbursement on the full purchase price to the dealer. The taxpayer will not report use tax on its subsequent rental receipts since it will have paid sales tax reimbursement on the purchase price of the trucks.

Transfers without a purpose or effect other than to change the way tax is reported and paid are disregarded for sales and use tax purposes. (See Annotations 330.1875 (7/8/92); 330.2820 (3/30/90); 330.5200 (8/14/69).) It is clear that the proposed transaction has no purpose other than to change the way the taxpayer reports tax. After the sales take place, nothing will have changed other than that tax will be reported and paid on the purchase price, rather than being reported and paid on fair rental value. As such, it will be disregarded for sales and use tax purposes and the taxpayer will continue to be required to report tax on fair rental value. 7/1/96.

335.0043.875 Lease of Tractors. A corporation engaged in business as a truck tractor dealer sold 22 tractors to an out-of-state lessor with delivery in California to the lessee. Although a resale certificate was not issued, the purchaser, by letter stated that the tractors were purchased for lease and that tax was being reported by the lessee. The corporation believed that no further tax liability existed because the lessor and the lessee agreed in their lease agreement that the lessee would report all tax on the leases directly to the State Board of Equalization.

The tractors are “mobile transportation equipment” as defined in section 6023. The corporation knew when it made the sale that the lessor was leasing the tractors. In fact, the tractors were delivered directly to the lessee. As a lease of mobile transportation equipment is not a sale, the sale to the lessor could not be a sale for resale. If the lessor wished to avail itself of the option to report the tax liability on fair rental value pursuant to section 6092.1, it should have issued a resale certificate. Since it did not, the corporation as the retailer, is responsible for the sales tax. 11/27/90.

335.0044.175 Lease of Vessel. A lessee is in the business of acquiring, repairing, and selling boats. The lessee obtained a lease with an option to buy (after a two year period) on a 1976 model, 51 foot sailboat. Since the lessee was planning to exercise the option after the two-year period and resell the boat, he did not pay tax on any of the lease payments. The lessee then decided not to exercise the option. For consideration of \$55,630, the taxpayer agreed to have his lease with the lessor canceled so that another party may lease the boat with an option to buy at the end of the two years.

Since the sailboat measures 51 feet in length, it is included in the definition of Mobile Transportation Equipment (MTE). Based on the facts presented, the lessor did not make a timely election to pay tax measured by fair rental value; therefore, the lessor owes sales tax reimbursement or use tax on the purchase price of the MTE unless the lessor has already paid tax reimbursement or use tax. Since the lease of the MTE is not a sale or a use by him for purposes of the Sales and Use Tax Law, the lessee of this MTE is not liable for the tax on the rentals he paid. 4/30/96.

335.0045 Leases to United States Government. The use tax is imposed on the lessor of any mobile transportation equipment, when leased to the United States Government, in the same manner as leases to any other person. The lessor is responsible for the use tax and the U.S. Government is not subject to tax. 12/16/92.

335.0045.300 Limited Fuel Capacity. Floating platforms which are designed to carry campers, trailers, motor homes, or other recreational vehicles but which contain a fuel capacity of only forty gallons are not mobile transportation equipment. Although they are long enough (thirty feet or more) to fit the definition of “ship,” the limited fuel capacity is insufficient to provide carriage of persons or property for substantial distances. 11/20/79.

335.0046 Loading and Unloading Equipment. Equipment leased to a U.S. Government contractor and used for loading and unloading government property being transported to various military bases in the United States is not exempt from sales tax under section 6006(g)(4) of the Revenue and Taxation Code because that exemption applies only to mobile transportation equipment used to transport property a

distance and not to equipment specially used for loading and unloading only. 12/16/69; 9/16/87. (See also Regulation 1661.)

335.0047 Mobile Boiler Units. Mobile boiler units are mounted on trailers by four bolts. Each boiler unit is capable of being lifted off the trailer by a crane, using the permanently attached lifting hooks on the unit. They can be operated while resting on the ground or while still mounted on the trailer. Since the boiler units are not permanently attached to the underlying chassis, as they can be leased either in a mounted or unmounted condition, they are not considered a component part of the trailer. Thus, the boiler units are not mobile transportation equipment. 9/2/86.

335.0048 Mobile Cranes. Certain kinds of mobile truck cranes constitute mobile transportation equipment. 6/26/75.

335.0049 Mobile CT Scan Units. Mobile CT Scan Units have the external appearance of that of semi-trailer moving vans. The medical equipment is located and permanently affixed in the semi-trailer in accordance with various floor plans offered by the manufacturer of the units. The units are purchased by a lessor for lease to persons who in turn, enter into agreements with various hospitals whereby the units are to be present at those hospitals during certain periods each week. The lessee is required to provide two experienced full time technologists to operate each unit on site.

Since these units are capable of being used to transport persons or property for substantial distances and at highway speeds, they meet the criteria for mobile transportation equipment under section 6023. Therefore, the units must be treated as mobile transportation equipment. 4/26/84.

335.0050 Motor Boats. Motor boats less than 30 feet in length are not “mobile transportation equipment” within the meaning of section 6023. 1/31/73.

335.0053 Motor Coaches. An out-of-state leasing company purchases two motor coaches outside of California and leases them to a charter tour company. Under the lease for each motor coach the lessee is to pay the lessor \$3,575 per month for a term of eighty-four months and lessee has an option to purchase the motor coach for \$67,813 at the expiration of the lease. The lessor made a timely election to pay use tax on the fair rental value and the lessor remits that tax to the Board.

Since motor coaches or buses are included in the definition of mobile transportation equipment (MTE), the rules applicable to leases of MTE apply. Therefore, when MTE is purchased outside California for use by leasing in California and the use is not exempt, use tax applies to the purchase price of the MTE unless the lessor makes a timely election to report its use tax liability measured by the fair rental value of the MTE. Here, each motor coach was used in California for intrastate purposes and not exclusively and continuously in interstate commerce during the six months following its first entry into this state. The interstate commerce exemption does not apply to the use of the motor coaches.

The election to pay tax on the fair rental value is irrevocable. Since the lessor made such an election, the lessor must continue to report use tax on fair rental value whether the MTE is inside or outside California. 6/16/95.

335.0055 Motor Home. A motor home registered as a house car does not qualify as mobile transportation equipment. 8/29/73

335.0060 Multi-Purpose Vehicles. Vehicles that are registered as multi-purpose vehicles such as Jeep, Bronco, Blazer, Land Rover, Land Cruiser, The Thing, are not mobile transportation equipment. 7/16/74.

335.0061 Occasional Sale—Property Acquired Under. The acquisition of tangible personal property in exchange for the first issue of stock of a commencing corporation is not a sale and is not subject to either sales tax or use tax.

The lease of assets so acquired, other than the mobile transportation equipment (MTE) is a continuing sale subject to use tax on the lessee because the lessor did not purchase the property and had no tax liability on its own use of the property. It could not elect to pay tax on "purchase price."

The lease of MTE so acquired is not a continuing sale, but rather a use by the lessor. Since the acquisition was not subject to sales and use tax, there is no liability for the rental of the MTE. 6/6/89.

[335.0062](#) **One-Way Rental Trucks.** A lease contract has an "estimated" term of five to six months but gives the lessee the absolute right to terminate upon 24-hours' notice.

Assuming the other conditions of section 6024 are met, the only definite term of the lease contract is 24 hours since the lessee is given an unconditional right to terminate the lease contract at the end of that period. There is no substantial difference between this contract and an open-end contract at a local rental dealer where the contract term depends on how long the lessee wishes to keep it. Therefore, the lease contract is for less than 31 days. 4/10/75.

[335.0062.200](#) **One-Way Rental Trucks.** A lessor leases a three-quarter ton truck to the United States Forest Service. The contract provides for no specific term. Under "contract period," it is provided that "the period of use will be as follows: From approximately May 1 through August 15, 1970." Under the terms of the contract, the lessee has the unconditional right to terminate the lease upon 24 hours notice. The bid solicitation document provides for a periodic rental amount, estimated period of use, and the total amount. For example, monthly rental—\$110, estimated months—6, amount—\$660.

Under the terms of the rental agreement, no definite lease term appears. The estimated period of use of approximately six months does not effectively establish a lease in excess of 31 days in view of the lessee's unconditional right to terminate upon 24 hours notice. Under such a right, the lessee is not obligated to rent the property in excess of 24 hours. Accordingly, the above lease qualifies as a short term lease of not more than 31 days within the meaning of Regulation 1661(a)(1)(C). The use of the equipment by the Forest Service under the lease also qualifies as "one way or local hauling of persons or property" within the meaning of the Regulation. To qualify as "one-way rental trucks" under Regulation 1661(a)(1)(C), the vehicle must be identified to the Board as set forth in the above Regulation. Since this was not done, tax is due on the cost of the vehicle. 4/30/75.

[335.0064](#) **Option to Purchase.** A truck dealer sold truck tractors which are mobile transportation equipment (MTE) to a leasing company on May 21, 1990, with sales tax reimbursement billed on the invoice. On May 23, 1990, the lessor entered into a lease agreement with a rancher for a term of forty-eight months under which the rancher had an option to purchase the equipment at the end of that term.

The purchase option price at the end of the lease is covered by three provisions in the lease contract. One of the lease contract clauses states that the rancher "shall be deemed the highest bidder on the equipment and shall purchase the equipment at scheduled termination for said Actual Residual Value." A subsequent contract clause states, in part, that if the lessor and the rancher cannot agree on the "Actual Residual Value" of the equipment, then the rancher has the duty to obtain bids for the equipment from other prospective purchasers. In that case, both the rancher and the lessor would be free to bid on the equipment with the equipment being sold to the highest bidder. The third provision to the contract goes into effect if certain tax benefits sought by the lessor are not available and it voids the two provisions regarding the sale of the equipment.

This transaction is a true lease and not a sale at inception because the rancher is not certain to own the MTE at the end of the lease term. There is a possibility that other provisions of the agreement could go into effect. Also, the rancher is not responsible for disposal of the MTE and the option price is not nominal.

Therefore, no further sales or use tax is due with respect to this lease transaction since the lessor paid sales tax reimbursement to the dealer when it purchased the MTE. However, if the rancher purchases the MTE at the end of the lease, tax will be due on that transaction. 3/23/95.

[335.0064.500](#) **Out-of-State Leases.** When MTE is removed from ex-tax California inventory for a lease that commences in California, the act of leasing constitutes a use in this state. Even if the MTE is later removed from the state, use tax applies measured by purchase price unless the lessor makes a timely election to pay tax measured by fair rental value on its timely return for the reporting period in which the MTE is first leased. If the lessor elects to pay tax on fair rental value, tax must be paid on that basis whether the MTE is in or out of California.

If instead, the lease commences outside California and there has been no use in California other than to transport the MTE outside California to the lessee at the out-of-state point, California use tax would not apply provided the MTE does not return to California for at least six months. (Annotation 570.1040.) If the MTE does return within six months, use tax would be due measured by purchase price unless the lessor had made a timely election to pay tax measured by fair rental value on its return for the period in which the MTE was first leased. 10/26/88.

[335.0065](#) **Pickups as One-Way Rental Trucks.** A vehicle manufacturer leases pickups to its franchise dealers for a period of 6 to 15 months. The franchised dealer in turn leases these trucks to its customers on a daily basis while the customer's vehicle is being repaired. Under these circumstances, the lease by the manufacturer can be allowed as a sale for resale provided the franchisee certifies as part of the resale certificate that the trucks are to be subleased in a manner that would qualify them as one-way rental trucks. 7/12/76.

[335.0070](#) **Pickup Camper.** Since a house car is included within the definition of a passenger vehicle under section 465 of the Vehicle Code, a lease of a combination pickup and camper which is registered as a house car with the Department of Motor Vehicles will not be regarded as a lease of mobile transportation equipment within the meaning of section 6023 effective January 1, 1972. 1/19/72.

[335.0070.150](#) **Pickup Trucks.** The fact that the lessee may choose to use pickup trucks within a restricted physical area does not change the pickup's classification as mobile transportation equipment. Application of tax cannot be dependent on events which may occur subsequent to the time the equipment is leased. 4/27/90.

335.0071 **Portable Rock Crushers.** Regulation 1661(b)(1) defines "mobile transportation equipment" as equipment used to transport persons or property for substantial distances. Portable rock crushers transport property and therefore satisfy the first part of the definition. Regarding the second part of the definition, equipment is considered capable of traveling "substantial distances" if it is able to travel or be towed at highway speeds. The portable rock crushers in question cannot be towed at highway speeds and, therefore, are not mobile transportation equipment. 5/17/78.

335.0072 **Portable Air Compressors.** Portable air compressors mounted on trailers are mobile transportation equipment if they are designed for movement over the highway for substantial distances. A four-wheel trailer which cannot be moved at highway speeds is not mobile transportation equipment. 5/13/80.

335.0073 **Principally—One-Way Rental Trucks.** Section 6024 provides for specific tax treatment of trucks "which are principally employed by a person in the rental business . . . leased out for short term rental of not more than 31 days . . ." In determining whether a vehicle is "principally employed," the six-month principal use test is the appropriate method. If over fifty percent of the days of the rental use of a given truck during the first six months is for the short term rentals, the truck qualifies for one-way rental truck classification. 10/6/77.

335.0074 **Resale of Leased Mobile Transportation Equipment.** A taxpayer purchases mobile transportation equipment from a dealer for purposes of a lease. The equipment is purchased in response to a request from the person who intends to lease the equipment from the taxpayer. The taxpayer executes the lease and at the same time, assigns the lease to a bank. The amount paid to the taxpayer by the bank exceeds the amount paid by the taxpayer to the dealer for the equipment. The dealer registered the vehicle

showing the bank as the registered owner c/o the customer-lessee, and also showing the bank as the legal owner.

There is a sale of the vehicle from the dealer to the taxpayer. This is evidenced by the fact the taxpayer purchases the vehicle with its own funds, and also exercises incidents of ownership over the vehicle when it leases the vehicle. In addition, there is a sale of the vehicle from taxpayer to the bank.

Under the circumstances of this case, the original sale of the vehicle from the dealer to taxpayer is a sale for resale. Taxpayer's lease of the vehicle, the assignment of the lease, and the resale of the vehicle to the bank constitutes a single, integrated transaction. Accordingly, the lease should not be regarded as an intervening use of the vehicle. The original sale from the dealer to the taxpayer is therefore not subject to tax.

Furthermore, since taxpayer is registered as a dealer with the Department of Motor Vehicles, the sale from taxpayer to the bank is subject to sales tax. The measure of tax is taxpayer's gross receipts from the sale. 4/12/78.

335.0075 Sailboats. Sailboats less than 30 feet in length are not "mobile transportation equipment" within the meaning of section 6023. 2/21/73.

335.0078.050 Subleases of MTE. Since leases of MTE are excluded from the definition of "sales" or "purchases," the lessor is the consumer of the MTE and should pay tax or tax reimbursement upon its acquisition. However, lessors purchasing MTE for the specific purpose of leasing it may issue a resale certificate to their vendors and elect to pay their use tax liability based on the "fair rental value," provided the election is made on or before the due date of a return for the period in which the MTE is first leased. The lessor is not relieved of the liability for the tax by accepting a resale certificate from a lessee who subleases the MTE to a third party even though the sublessee reports tax on sublease proceeds. The liability resides with the purchaser/prime-lessor and his failure to abide by the terms of the election results in use tax being due on the purchase price. 4/25/84.

335.0079 Subleases—Use Tax Obligation on Nonexempt Use. Since the lessor is the consumer of mobile transportation equipment (MTE), any use of the MTE by the lessee or sublessee is attributable to the lessor. Hence, if a use tax obligation arises as a result of a nonexempt use of the MTE in this state by the sublessee (e.g., failure to meet the test of first use in interstate commerce), the prime lessor would be liable for the use tax. 10/3/95.

335.0081 Timely Election to Pay Tax on Fair Rental Value. On February 17, 19XX, Company A purchased an aircraft from Company B. On the same day, Company A leased the aircraft back to Company B for 96 months. The sale and lease back agreement provided that the aircraft would be delivered to A and then back to B in Delaware. The aircraft would thereafter be based in California. Upon expiration of the lease, B is required to return the aircraft to A.

Company A had never held a California seller's permit and had no consumer's use tax account at the time it purchased the aircraft from Company B. Upon learning of the sale/lease, the Board sent Company A a tax return with a due date of July 31, 19XX, five months after the date of purchase. However, Company A had already filed a first and second quarter return, and paid tax on the rental payments it received from Company B, without having a permit number. Although there is a question as to when the returns were actually filed, the checks that accompanied the returns were dated July 25, 19XX.

Aircraft are "mobile transportation equipment" (MTE) and a lease of MTE is excluded from the definition of a "sale". The purchase of MTE for leasing purposes is, therefore, a retail purchase for use, not a purchase for resale. Since every person making any sale of an aircraft is a retailer, Company A's purchase of the aircraft from Company B was a retail purchase from a retailer. Under Regulation 1661(b)(2), an election to pay tax measured by the fair rental value of MTE is valid only if made timely.

Regulation 1610(c)(2)(A) provides in part, that for persons who do not hold seller's permits, shall make a return and pay the use tax measured by the sales price of the aircraft on or before the last day of the month

next succeeding the month in which a return form is mailed to the purchaser, or the last day of the twelfth month following the month of purchase during which the aircraft is purchased, whichever period expires earlier. Accordingly, it was concluded that Company A made a timely election to pay tax on the fair rental value because they filed returns prior to the due date of the return that was sent to them by the Board. 6/21/91. (Am. 2005-2).

335.0082 Trailer Manufacturer. A trailer manufacturer plans to lease its manufactured trailer to a California customer. The manufacturer may pay tax measured by the purchase price of the raw materials and tax would not apply to the lease receipts. The trailer is mobile transportation equipment. Since the lease will not qualify as a sale or purchase, the manufacturer will be regarded as the consumer of the raw materials incorporated into the trailer. 5/7/76.

335.0083 Trailers. Trailers are mobile transportation equipment under Regulation 1661, and the lessors of such trailers are regarded as consumers. For purposes of the section 6388.5 exemption, the use of the trailers determines whether the exemption applies. Since a lessor consumes the trailer by leasing it, the manner in which the trailer is used by the lessee is regarded as the lessor's use for purposes of section 6388.5. As such, if the trailer is used by the lessee in a manner qualifying for the section 6388.5 exemption, then the consumer of those trailers, i.e. the lessor, obtains the benefit of the exemption. 1/21/92.

335.0083.750 Transfer of an Aircraft without Consideration. An aircraft was transferred by an individual to a corporation which will not pay any consideration to the individual or any other person in exchange for the contribution of the aircraft to its capital. It will not issue stock or other securities or assume any indebtedness or other liability in connection with the transfer. The transfer is not a sale or purchase under sections 6006(a) and 6010(a) respectively since no consideration was involved in the transfer. The completion of the Bill of Sale for FAA purposes, which recites formalities of consideration, will not change this conclusion provided there actually is no consideration paid by the corporation or received by the individual in exchange for the transfer of the aircraft. Since the transfer is not a sale or purchase, there is no sales or use tax with respect to the transfer. The corporation's subsequent lease of the aircraft, which is a lease of mobile transportation equipment, is also not subject to use tax. 3/3/89.

335.0084 Transfer of a Lease of Mobile Transportation Equipment Held in Trust. Company B is a lessor of mobile transportation equipment (MTE) leasing to Company D and reporting use tax measured by fair rental value. The lease is held in a trust, with Company B as trustee and Company C as the beneficiary of the trust. Company A acquires the lease from Company B and, in accordance with trust documents, Company A is substituted as the new trustee and lessor. Also, the beneficial ownership in the trust is transferred from Company C to Company E.

Based on the above, the MTE remains the property of the trust after a new trustee and beneficiary are substituted for the old and, therefore, there is no sale of the MTE. Since the election to pay tax on fair rental value is irrevocable if there is no sale, the trust must continue to pay tax on the fair rental value.

Even if there is a sale of the MTE to a new lessor, the new lessor may also elect to pay use tax on the fair rental value by issuing a resale certificate and paying tax on fair rental value. The election must be made on a timely filed return for the period in which the sale occurred if the property is subject to a lease at the time the sale occurred. 5/5/93.

335.0084.500 Transfer of Leased MTE. An out-of-state firm leased four three-axle trucks to Company A. Company A is opening a branch in California and plans to transfer the leased trucks to the California location. The out-of-state firm indicates that the trucks have been used at the out-of-state location for at least four months. Since the trucks are mobile transportation equipment and they were used outside the state for more than 90 days prior to entry into California, no sales or use tax is due upon transfer of the vehicles to California; nor is any sales or use tax due on rental receipts. 5/18/97.

335.0085 Trans-O-Vac. Trans-O-Vac is a pickup which has a sweeper installed on a pickup chassis. Since it is capable of transporting persons or property substantial distances, it is mobile transportation equipment. 3/11/75.

[335.0087](#) **Truck Cranes.** Truck cranes with a lifting capacity of 10–25 tons are classified as “mobile transportation equipment.” Although not controlling in itself, the fact that the 10–25 ton cranes do not require special permits to travel on the highway distinguishes these cranes from the larger cranes and makes them less amenable to a finding that they are not for use for substantial distances.

With respect to the question of whether these truck cranes carry persons or property, it is concluded that they do. The truck cranes carry drivers who are required to operate the cranes and also carry the crane itself. 5/24/77.

[335.0089](#) **Truck Cranes as Mobile Transportation Equipment.** Whether certain “truck cranes” and other mobile units are properly classified as mobile transportation equipment depends on whether or not the particular unit is designed to be moved substantial distances such as over the highways under its own power, or by being pulled behind a tractor, or instead is limited by its design to be used in the confines of a limited area such as a construction site, loading area, etc. Merely because a particular leased unit is only used by a lessee in a limited area does not take the unit out of the definition of mobile transportation equipment if in fact the unit is designed to move property or persons substantial distances. Following is the application of these rules to specific items:

(1) Speed Swing, Trak-Kleener, Pipewood Hauler and Forester appear to be designed for limited movement within the confines of a limited area, i.e., construction site or logging site, and are not designed for highway use. Accordingly, these items are not mobile transportation equipment.

(2) Truck-Krane-Model 90TKLS and Model 60TK and Wrecking Crane Model 200 appear to be designed for movement on the highway. Merely because the travel of the Truck Crane is apparently limited to 75 miles at a time does not exclude that travel from the definition of substantial distances. It is clearly designed for movement on the highway notwithstanding the fact that special highway permits are required.

(3) Based on the following stated facts, the Multikrane does not appear to be mobile transportation equipment:

- (a) It does not transport persons or property for substantial distances.
- (b) It does not have a speedometer or odometer.
- (c) Its tires are suitable for rough terrain only.
- (d) It is not normally licensed for use on public highways.
- (e) It is normally transported from location to location of substantial distances by common carrier or customer vehicle. 6/10/76.

[335.0089.700](#) **Use of MTE by Lessor.** A taxpayer purchases an item of mobile transportation equipment (MTE) for use in California and makes a timely election to pay use tax measured by the fair rental value (FRV) pursuant to subdivision (d) of Revenue and Taxation Code section 6094. After leasing the aircraft for some period of time and reporting tax measured by FRV, the taxpayer makes a use of the MTE other than leasing, i.e., a nonconforming use. Subsequent to the nonconforming use, the taxpayer begins to lease the MTE again. Under such circumstances, it is necessary to determine whether the taxpayer has established that its use of the MTE was sufficiently limited to leasing for purposes of making a valid election to pay tax measured by FRV under the requirements of section 6094(d). If a valid election has been made, it must also be determined whether the taxpayer has established that the taxpayer has stopped leasing the MTE for such a significant amount of time that the taxpayer has substantively changed its use of the MTE, resulting in the abrogation of the election that would otherwise be irrevocable.

In order to make these determinations, the following six-month test periods apply:

1. A taxpayer has established that it has made a valid election to report tax measured by FRV pursuant to section 6094(d) if the taxpayer can demonstrate that it has limited its use of the subject MTE to leasing for at least the first six months of use. If the taxpayer makes a nonconforming use of the MTE at any time (whether during or after this six-month test period), use tax is due measured by the purchase price of the MTE (but offset by the amount of tax previously reported measured by FRV).

2. A taxpayer that has made a valid election to report tax measured by FRV has established that it has stopped leasing the MTE (and thereby substantively changed its use of the MTE) when the taxpayer refrains from leasing the MTE for at least the first six months following the nonconforming use. If a taxpayer satisfies the requirements of this second six-month test, then the taxpayer will owe use tax measured by the purchase price of the MTE (with appropriate offsets). To the extent the taxpayer leases the MTE after the expiration of this second test period, the taxpayer will not be obligated to report tax measured by FRV. 12/30/05. (2007-1).

[335.0090](#) **Vans.** A van equipped with a seat in the front only, is “mobile transportation equipment.” If leased in that condition by the lessor, the sale of the van to the lessor by a dealer is a taxable retail sale even though the lessee may subsequently install seats in the rear. 5/26/77.

335.0100 Van May Qualify as Passenger Vehicle. Effective January 1, 1977, section 465 of the Vehicle Code was amended to provide that any motor vehicle, other than a motortruck or truck tractor, designed for carrying not more than 12 persons, including the driver, which is maintained and used in the nonprofit transportation of adults to and from work location as part of a carpool program or when transporting only members of the household of the owner thereto shall be considered to be a passenger vehicle for the purposes of this section. Accordingly, effective January 1, 1977, vans that are designed to carry not more than 12 persons and which are used in the manner described will not be regarded as mobile transportation equipment. This provision was repealed effective December 31, 1982. On and after January 1, 1983 such vans are once again mobile transportation equipment. 6/21/77; 3/15/84.

[335.0120](#) **Vessel Leased for Stationary Storage.** An ocean going vessel fully outfitted for ocean travel and not integrated into real property is leased for purposes of stationary storage of cement. The lease is a lease of mobile transportation equipment because the vessel was designed for and is capable of transportation as a vessel. 1/15/87.

[335.0130](#) **Vessel Skipped by Owner.** When it is a condition to leasing a 35-foot sailboat that the owner (lessor) “skippers” the boat, the boat owner is providing transportation services to the customers. The chief characteristic of a renting or leasing is the giving up of possession to the hirer, so the hirer and not the owner uses and controls the rented property (*Entremont v. Whitesell*, 13 Cal.2d 290 citing Civil. 1925, 1955). When possession, custody, and license to use equipment remains totally in the hands of the owner or his employees, such a transaction is not a lease for sales and use tax purposes.

Therefore, the taxpayer does not have the option to report and pay use tax on lease receipts. Use tax is due on the total purchase price of the sailboat. 1/29/88.

[335.0575](#) **Cargo Containers and Chassis Used in Ocean Shipping.** A domestic shipping company is engaged in worldwide ocean shipping, and does not engage in transporting cargo from point to point within California. It purchases cargo containers and chassis which are used in its shipping operations. After a brief period following the purchase, the shipping company will sell the cargo containers and chassis to a trust and then lease them back from the trust. The sale and leaseback is governed by one master agreement but there are multiple deliveries of both containers and chassis to the trust over a period of several months. Tax application to the cargo containers and chassis is discussed below.

(1) Cargo Containers. The cargo containers are manufactured in foreign countries and the shipping company will take delivery of them at the manufacturer’s premises and place them in service at the earliest possible moment. Title to the containers will pass to the shipping company outside of California. At the time of transfer to the trust and the leaseback to the shipping company, the containers will be physically located either outside of California, on the high seas, in a foreign country, or within operations. Cargo

containers entering California will be loaded with cargo and after delivery of the cargo, the containers will continue to be used in the shipping company's worldwide shipping operations.

(A) The sales of the cargo containers to the shipping company are retail sales and not sales for resale since the shipping company will put the containers to use prior to its sale to the trust.

(B) Since the sales of the containers to the shipping company takes place outside of California, the sales are not subject to the sales tax. Although the containers are not subject to sales tax and the first functional use of the containers takes place while the containers are located outside of California, use tax would nevertheless apply to the shipping company's use of the containers in California if the containers enter this state within 90 days from the date of purchase and are not continuously used in interstate or foreign commerce, or are not used by the shipping company outside of the state at least 50 percent of the time over a six month period. Use tax would not be applicable to any in-state use of the containers by the shipping company if the shipping company uses the containers outside of California in excess of 90 days from the date of purchase to the date of their entry into California exclusive of the time of their shipment unloaded with cargo to California.

(C) Sales tax applies to the sale from the shipping company to the trust for those cargo containers which are physically located within California at the time of sale, notwithstanding the fact that the containers are purchased by the trust for use in interstate or foreign commerce. Since cargo containers are mobile transportation equipment ("MTE") under Regulation 1661, the trust as lessor of the MTE may make a timely election to report the tax measured by the fair rental value as provided by Regulation 1661. Although sales tax does not apply to containers physically located out of state at the time of sale, the trust as lessor may nevertheless be liable for use tax when the property is purchased for lease in California. Regulation 1661 provides that if the sale and delivery of the MTE occurs outside of California and the property is purchased for use by the lessor, use tax will apply measured by the purchase price unless the equipment enters the state in interstate commerce and is used continuously thereafter in interstate commerce, or the lessor makes a timely election to report his use tax liability measured by fair rental value.

When the containers are first functionally used by the trust outside of California in interstate or foreign commerce, the containers are nevertheless presumed to have been purchased for use in this state if they are brought into this state within 90 days from the date of the sale to the trust. This presumption does not apply, however, under the following conditions: (a) the property is used or stored outside of California one half or more of the time during the six-month period following its entry into California, or (b) the property is purchased for use and is used in interstate or foreign commerce prior to its entry into this state and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

(2) Chassis. Chassis are pulled by the tractor unit of a truck and can be used to carry cargo containers on highways. These chassis are manufactured within the United States, including California. Title to the chassis will pass to the shipping company while they are located at the manufacturer's premises and the manufacturer will deliver them to their ultimate destination, which will be in California in most cases. For the brief period between the shipping company's acquisition of the chassis and their resale to the trust, the shipping company will not make any use of the chassis. The sales of the chassis to the shipping company are sales for resale and the tax application to the subsequent sales from the shipping company to the trust is the same as that under paragraph (1)(C) above. 9/20/84.

(Note: Subsequent statutory change concerning sales and leaseback.)

335.0600 **Center Mount Cranes.** P&H/W350 and P&H/W100 center mount cranes are large power equipped cranes designed for use in the movement of heavy material at varying heights, chiefly at construction sites. Their base is specially designed for use on rough terrain. They are self-propelled and capable of movement over the public highway. However, it is not economically feasible to move the cranes by this method for distances in excess of 10 miles because of their limited speed and operating cost. The cranes are licensed for movement over the public highway but require trip permits for some moves.

Mobile transportation of the property is a necessary and essential purpose of its design and functional use. Also, transportation over the public highway is admittedly one of their uses. Therefore, these cranes qualify as mobile transportation equipment within the meaning of section 6023 and Regulation 1661. 6/24/76.

335.0680 Fair Rental Value—Election Due Date. If MTE, including aircraft, is purchased ex-tax and leased, the tax on the lease is a use tax imposed on the lessor's use of the property. The lessor may report the tax incrementally by using the fair rental value, which is normally regarded as the amount received from the lessee. This option requires that the fair rental value election must be made on or before the due date of a return for the period in which the MTE is first leased, not for the period in which rental receipts are first received. If the lessor fails to report in the first period in which the MTE is leased, the measure of tax is the purchase price of the MTE. 5/8/85.

335.0690 Fair Rental Value—Lump-Sum Payments. A lessor of mobile transportation equipment has elected fair rental value as the measure of tax. It is expected that over the whole term of the lease, the fair rental value would be equivalent to the actual payments by the lessee for the use of property. The Board has not administered any strict rule that the amounts reported as fair rental value during the lease must vary precisely according to amounts paid by the lessee from time to time during the lease.

A capital reduction is a lump-sum payment by a lessee during the term of the lease which will have the effect of reducing the individual amounts of the further rental payments due over the remaining term of the lease. The amounts attributable to capital reduction could be spread over the remaining term of the (fair rental value) lease. In any event, the fair rental value would be equivalent to actual payments made by the lessee.

Deficiency payments which occur because of the decline in value through use of the vehicle (rather than a decline in value through catastrophic loss) would be a reflection of fair rental value of the equipment under that lease. But the deficiency payable at the end of the lease could not be redistributed over the prior term and so would result in a fair rental value adjustment upon termination and that adjustment must be included in the amount upon which tax is computed.

The concept of rental receipts applicable under sections 6011 and 6012 focuses on the actual payments made and billed as the measure of the tax due at the time payments are determined. That concept does not apply to fair rental value. Therefore, where the lessor experiences unusual high or low payments by the lessee, the lessor measuring use tax liability by the fair rental value may report the tax based upon payments when made or may redistribute excess or deficiency over the term of the lease as a method of reporting fair rental value. 12/19/80.

335.0800 Issuance of Resale Certificate—Mobile Transportation Equipment. A lessor of mobile transportation equipment (MTE) may issue a resale certificate for the limited purpose of reporting its use tax liability on the fair rental value basis. The lessor cannot issue a resale certificate in order to attempt to qualify for the exclusion provided in section 6009.1. If a lessor issues such a certificate to avoid payment of sales tax reimbursement, it owes tax on cost unless it makes a timely election to pay tax on fair rental value, which would have to be paid without regard to the location of the MTE during the lease. 5/7/97.

335.0910 Lease of Buses to State of California. Even though buses leased to the State of California are exempt from vehicle registration fees, their use is not exempt under the California Sales and Use Tax Law. The sale of mobile transportation equipment (MTE) such as buses to a person who will lease that property is a retail sale and the sale to the lessor, or the use by the lessor (by leasing), is subject to sales or use tax. The lessor of these buses to the State of California may pay tax or tax reimbursement on the purchase price or on the fair rental value as explained in Regulation 1661. 12/30/96.

335.0925 Lease Deposits or Advance Payments on Mobile Transportation Equipment. In setting up a lease of mobile transportation equipment with a customer, a company requires the first month's rental in advance and may also require the last month or last few month's rental in advance. The entire amount of the "advance rentals" or "deposits" would be put into the advance payments section of the lease receivable. When the payment was due from the lessee, the amount is applied to meet the rental payment.

The company, as the lessor of mobile transportation equipment, must pay use tax on the leasing of the equipment. The tax will not be due until the equipment is used. The advance payments should not be considered as part of the fair rental value of the first month's use, but rather should be taxed in the months when they are applied to meet the rental payment. 8/4/80.

335.0940 Leases of Rail Freight Cars. Rail freight cars are mobile transportation equipment (MTE). The purchaser's use during the six months following the date of purchase of the rail freight car determines whether the use of rail freight cars is exempt from tax under section 6368.5. If the purchaser uses the rail freight cars by leasing them, it is the lessee's use of the rail freight cars that determines whether the use qualifies for the exemption. If a lessee's principal use of the rail freight car during the six months following the date of purchase is in interstate commerce, the sale to and use by the lessor is not taxable. 8/23/96.

335.0950 Lease of Trailer by Bank. A California bank purchases a trailer chassis from a California manufacturer with delivery in California. The bank is acquiring title for purposes of security. The bank will immediately lease the chassis to a corporation which will sublease it to an affiliate. The chassis will have an unladen weight of 6,000 pounds or more, will be registered out of state, and will be used exclusively outside California or exclusively in interstate or foreign commerce, or both, and will be moved, loaded with cargo, from California to a point outside the state within 75 days after delivery by the manufacturer. The bank will provide affidavits pursuant to section 6388.5 to the manufacturer.

Based on the above circumstances, questions relating to the above transaction and its corresponding answer follows:

(1) Since the bank is making the purchase solely of security, will the exemption available under section 6388.5 apply to the purchase and immediate lease of the chassis by the bank?

The above lease by the bank is a lease of mobile transportation equipment and, accordingly, is not a sale. Either the sale of the equipment to the lessor or its use in this state may be subject to tax. In this situation, the exemption provided by section 6388.5 applies even though the sale is to a lessor and the mobile transportation equipment is delivered to and is thereafter used by the lessee.

The same result follows with use by the sublessee. Since it is the intention of the lessor to immediately sublease the chassis to an affiliate, the use in interstate or foreign commerce, or both, by the sublessee would be imputed to the lessee/sublessor which would in turn be imputed to the bank and the exemption of section 6388.5 would apply to the sale by the manufacturer.

(2) Will the exemption provided by section 6388.5 be applicable if the chassis carries a load on their initial movement out of California?

The chassis may carry a payload out of the state without loss of the exemption provided it is a payload in interstate or foreign commerce, or both.

(3) Can the chassis, if purchased within the exemption of section 6388.5 and used exclusively in interstate or foreign commerce, be assigned to a California depot?

The chassis may return to California and may be assigned to a California depot, without loss of exemption, provided, however, that the use of the chassis is exclusively the carriage of interstate or foreign commerce goods, or both. After leaving the state, the chassis may return to California, and even remain in California, as long as they are exclusively carrying interstate or foreign commerce goods, or both. However, if so much as one carton is for intrastate commerce, the exemption will be lost. 4/19/85.

335.0965 Leases of Aircraft Engines—Standby. The lease of an aircraft engine for use in stand-by service is a lease of mobile transportation equipment. Mobile transportation equipment includes property which is or becomes a part of mobile transportation equipment. 3/25/75.

[335.0980](#) **Leases to the United States.** Lessors of mobile transportation equipment are the consumers of that equipment. Therefore, the leases of mobile transportation equipment to the United States government or any other party are not sales and are taxed in the same manner. 5/24/84.

[335.1005](#) **Lessee/Sublessor of Pick-up Trucks.** Pick-up trucks leased by the manufacturer to a dealer who subleases them to the U.S. Forest Service with no tax paid by either the lessor or the lessee/sublessor are subject to use tax on the cost because a timely election to pay use tax measured by rental receipts was not made. Since a pick-up truck is clearly within the definition of MTE, the use being taxed is not the use by the United States but the use by the lessor. Therefore, tax is due from the prime lessor (the manufacturer) and not from the sublessor. 6/13/85.

335.1250 **Mobile Carpet Cleaning Machine.** A mobile carpet cleaning machine which is not permanently attached to the truck on which it is being carried and which machine is unloaded and placed on a service cart before being used is not mobile transportation equipment under Regulation 1661. The carpet cleaning machine is not a component part of the truck upon which it is being carried and, therefore, is not mobile transportation equipment. 10/7/83.

335.1375 **Purchase of Aircraft.** A California corporation is a scheduled common carrier operating pursuant to the provisions of Part 135 of the regulations of the F.A.A. and also operates pursuant to the provisions of Part 298 of the Economic Regulations of the Civil Aeronautics Board. The company also holds an operating certificate for Air Taxi/Commercial. The company purchased an aircraft from a foreign aircraft manufacturing firm and subsequently assigned the purchase contract to a California bank. On receipt of the aircraft, the bank will lease the aircraft to the company for eight years. The aircraft will be used by the company for the interstate and intrastate shipment of freight and also carry passengers within the State of California on a charter basis. The aircraft will be based in this state.

Aircraft operating pursuant to Part 298 of the Economic Regulations of the Civil Aeronautics Board by holders of air tax/commercial operating certificates qualify for the exemption provided for by the statute, provided the persons operating such aircraft use them in the common carriage of persons or property. A company providing air transportation to the public in an aircraft under control of the company's pilot at a rate based on mileage plus standby and other charges, on a nonscheduled basis, is a common carrier. Based on the above described facts, the lease to and the use by the corporation of these aircraft will be exempt from the tax, provided that the corporation operates the aircraft on a common carriage basis. 10/24/69.

[335.8000](#) **Sale of Leased Aircraft.** An aircraft is regarded as mobile transportation equipment under the California Sales and Use Tax Law. A lessor is required to pay tax measured by the purchase price of an aircraft at the time of acquisition, or the lessor may elect to pay tax on the fair rental value basis. If a lessor elects to pay tax on the fair rental basis and the aircraft is subsequently taken out of rental service and resold, the aggregate rental receipts paid may be less than the purchase price of the aircraft. This alone would not trigger application of additional use tax. The election to pay tax on rental receipts is not a true "installment" election, but is an alternative method of tax computation. Thus, if the aircraft is taken out of rental service and sold or otherwise disposed of (including trade-in), no additional use tax would be due by virtue of such an act. Of course, if the aircraft is withdrawn from lease inventory for other use, additional tax will be due. 9/29/97. (M98-3).