

160.0025

160.0025 Personal Property Leased by a Bank or Financial Corporation. Leased personal property that is accurately reported pursuant to Revenue and Taxation Code Section 441 (f) by a financial corporation should be subject to a single assessment because Revenue and Taxation Code Section 235 requires the conclusive presumption of ownership by the lessee. C 6/13/96.



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June 13, 1996

Mr. [REDACTED]
[REDACTED]
1792 Tribute Road, Suite 450
Sacramento, CA 95815

Re: Reporting and Remitting Requirements of a Financial Corporation Lessor

Dear Mr. [REDACTED]:

In your letter of February 8, 1996 and follow up of April 10, 1996, you requested our advisory opinion as to whether your client is exempted from (i) filing county business property statements with respect to tangible personal property leased to customers, and (ii) charging/assessing, collecting, and remitting from its lessees any property taxes which might be imposed on leased personal property. Your client is a wholly owned subsidiary of a federally chartered bank that derives more than 50 percent of its gross income from the leasing of tangible personal property. The client is classified as a financial corporation and files state income tax returns under Revenue and Taxation Code, Section 23183. Since this tax is in lieu of any personal property tax, it is your view that your client should not be required to file county personal property statements and should not be subject to the multiple assessing provisions of Revenue and Taxation Code, Section 405(b):

The assessor may assess all taxable property in his county on the unsecured roll to both the lessee and lessor of such property.

We would agree with your position on assessment but disagree in regard to reporting. In our view accurate reporting is the means whereby the multiple assessment should be eliminated. If the assessor is correctly informed of the correct location of the property as well as the party that is ultimately responsible for the payment of the personal property tax, then it should not be necessary to resort to Section 405(b).

The basic requirement for reporting personal property is found in Revenue and Taxation Code, Section 441 and it is from this provision that the Form 571-L, of which you are familiar, derives. The foundational paragraph of this section expressly requires the filing of a property statement upon the request of the assessor whether or not the other mandatory provisions have been met. In our view this portion of the statute is sufficient authority to require your client to report the personal property that it owns. However, we also conclude that subdivision (f) of Section 441 is more precisely on point in that it specifically requires a property statement to be filed by a financial institution that leases property to another entity.

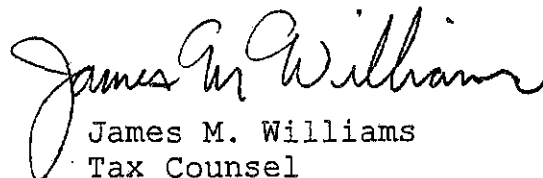
Assuming that in the future your client makes the filing as required above, we would recommend that it supplement the statement with a clear indication that (1) under the terms of the lease, it has designated the lessee as liable for payment of the tax and (2) under Section 235 the lessee is conclusively presumed to be the owner of the property. As a result thereof, your client should request a single assessment to the lessee who is the proper assessee for personal property that is subject to these qualifications. Your client may also wish to assure the assessor that it is on guard with respect to any default by the lessee and well prepared to take appropriate action to protect its security interest in the leased property.

If your client takes these precautionary steps in the reporting process, then we would conclude that the assessor would be accurately advised of the location of the property and the entity in legal possession and on this basis should be able to make a single correct assessment that avoids the time and duplication on the assessor's part and unnecessary extra effort on your client's part.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county.

Our intention is to provide courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,


James M. Williams
Tax Counsel