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79/155

September 7, 1979

TO COUNTY ASSESSORS:

GUIDELINES TO DIFFERENTIATE
BETWEEN A LEASE AND
A CONDITIONAL SALES CONTRACT

As you are aware, Article XIII, Sections 27 and 28 of the state constitution exempt the personal property of banks and insurance companies from property taxes. Likewise, Revenue and Taxation Code, Section 214 exempts property owned and used by certain welfare organizations. Since the exempt or taxable status of personal property may depend upon ownership, determining whether a given contract is a lease or a conditioned sales contract may be of prime importance.

A lease is generally defined as a contract under which a person secures the temporary use and control of the property. A conditional sales contract can be defined as a contract that provides use and control to a buyer with the seller retaining title as security for payment. The buyer or lessee is the beneficial owner of the property.

According to the Uniform Commercial Code, in determining whether an instrument is a lease or a sales contract, the contract form is not as important as the intent of the parties. The intent, in turn, is derived from the substance of the contract. In other words, you must look beyond the contract title. An agreement identifying itself as a lease may, in actuality, be a conditional sales contract and vis-a-vis.

Following are some areas that will help you determine the intent of the parties to the contract:

(1) Lease Period

Is the lease period approximately the same as the anticipated life of the property? Is the lease for a fixed period of say three years with only a nominal optional payment required to transfer title? Either of these conditions would be indicative of a sales contract. Conversely, if the lease is cancelable on a monthly or annual basis; or, if the optional payment clause is at market value, then a lease is indicated.

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(2) Rent

Are the contractual rental payments equal to or greater than the current purchase price? In this event a conditional sales contract is indicated.

(3) Accounting Treatment by Lessor

Is the lessor treating the property as a depreciating asset or as an account receivable? Treatment by the lessor as a depreciating asset is a strong indication of a bonafide lease.

(4) Ownership Terms

Does the contract contain specific provisions retaining ownership with the lessor? This, of course, is a strong indication of a lease.

With any given contract some of the contract terms may be indicative of a lease, while others may point towards a sales contract. Your determination should be based upon the indications of a preponderance of the terms.

Terms specifying liability for risk of damage or loss and payment of insurance, taxes, and other expenses are mere matters of contract between the parties and do not establish ownership interests in either party.

Additional guidelines and discussions are contained in Attorney General's Opinion No. C.V. 78/58, November 3, 1978.

Questions regarding the above should be directed to Bud Florence of this division.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

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