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December 21, 2010

Honorable Robert Quon
 Los Angeles County Assessor
 500 West Temple Street, Room 320
 Los Angeles, CA 90012-2770

**Re: Conditional Sales Assessments to Lessors
 Assignment No.: 10-137**

Dear Mr. _____ :

This is in response to your August 13, 2010, letter as well as M _____'s April 1, 2010, email wherein you requested our opinion regarding whether property subject to conditional sales leases may be assessed to the lessor. As explained below, it is our opinion that property subject to conditional sales leases may generally be assessed to either the lessee or the lessor.

Factual Background

You ask whether county assessors can legally assess taxable personal property subject to conditional sales leases (also called conditional sales contracts or agreements) to the lessor in the same manner as they assess true leases. Conditional sales leases are agreements whereby the seller accepts periodic payments for the purchase price while retaining title to the property for security purposes. You state that this practice would save time and reduce costs.

Law & Analysis

All property, real or personal, is taxable unless it is exempt by the Constitution or statutes. (Cal. Const, art. XIII, §§ 1-3.) Revenue and Taxation Code¹ section 405 gives the assessor the authority to assess persons owning, claiming, possessing, or controlling property. With regard to leased property, because the lessor is the owner but the property is in the possession and control of the lessee, either the lessor or the lessee may be the assessee. (Assessors' Handbook Section 504 *Assessment of Personal Property and Fixtures* (October 2002), p. 6 (hereinafter AH 504).) Section 441, subdivision (a) requires that every person who owns taxable personal property (other than a manufactured home) in the county that costs \$100,000 or more must file a property statement, showing "all taxable property owned, claimed, possessed, controlled, or managed by the person filing it and required to be reported thereon." While these provisions permit either a lessor or lessee to report leased personal property, section 442, subdivision (c), with exceptions not relevant here, requires leased property subject to a conditional sale agreement to be reported on the lessor's property statement.²

¹ All section references are to the Revenue and Taxation Code unless otherwise noted.

² Rev. & Tax. Code, § 442, subd. (c) states in relevant part, "Property that is the subject of a contract designated as a lease that provides that the lessee has the option of acquiring the property at the end of the lease term for one dollar (\$1), or any other nominal consideration, shall be reported by the lessor on the lessor's property statement."

AH 504, page 112 explains the distinction between true leases and conditional sales contracts as follows:

True leases, whether short-term or extended-term as defined earlier, are agreements under which an owner gives up possession and use of his/her property for valuable consideration and for a definite term and at the end of the term, the owner has the absolute right to retake, control, or convey the property. It is an agreement under which there is no intention of transferring ownership. At termination of the lease, the property will be returned to the lessor.

Conditional sales contracts or financing leases (agreements) are purchases rather than true leases. They can be short-term or extended-term agreements whereby the seller (vendor) accepts periodic payments for the purchase price while retaining title to the property for security purposes. Possession of the property transfers to the buyer (vendee) without full legal title until payment of the purchase price or a predetermined date occurs.

These contracts provide possession, use and control to the buyer. The buyer or lessee is the beneficial owner of the property, and therefore becomes the assessee, regardless of whether or not they hold title.

We have advised that property subject to a true lease should typically be assessed to the lessor, while property subject to a conditional sales contract should usually be assessed to the lessee since the lessee is considered the owner of the property. (AH 504, p. 6.) It is our opinion that this method of assessment helps to avoid double taxation, to ensure correct application of property tax exemptions, and to allow for the proper valuation of the property subject to lease. Further, since the situs of property subject to a long term lease is determined by the use of the lessee, assessing the property to the lessee makes certain that the correct county will collect the taxes due. (Property Tax Rule³ (Rule) 204, subdivision (b).)

Notwithstanding our advice, there is no statutory requirement that property subject to a conditional sales lease be assessed to the lessee. Because the lessor is the record owner of property subject to a conditional sales lease it is our opinion that, pursuant to section 405, the county assessor may legally assess the property to the lessor. This was confirmed in the case of *Sherman v. Quinn* (1948) 31 Cal.2d 661, 664: "Section 405 of the Revenue and Taxation Code applies to real and to personal property, and the assessment to either the vendee or the vendor under a conditional sale contract of land is not invalid."

Based on the foregoing, it is our opinion that a county assessor may assess either the lessor or the lessee of property subject to lease. This applies to true leases and conditional sales leases. Pursuant to Rule 204, subdivision (c), the assessor may place a single assessment on the roll for all leased personal property in the county that is assessed to the same taxpayer.

Nothing in this letter should be construed to be in conflict with the advice contained in AH 504. It is still our opinion that the better practice is to assess property subject to conditional sales lease to the lessee. Should a county choose to assess the lessor instead, then precautions should be taken to ensure that property is not subject to double taxation. The county should analyze the lessee's use of the property to determine the correct situs of the property and to

³ Property Tax Rules are sections in title 18 of the California Code of Regulations.

determine if any exemptions apply. Further, pursuant to section 235, the assessor shall not make assessments to banks and financial corporations that pay an in-lieu tax. Therefore, property subject to a conditional sales lease where the lessor is an exempt bank or financial corporation must be assessed to the lessee. Finally, under the market value concept, where price is the basis of value, the sales tax and freight charges are elements of value. (AH 504, p. 53.) Therefore, sales tax and freight charges must be included by the lessor when reporting property subject to conditional sales leases on its business property statement.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Daniel Paul

Daniel Paul
Tax Counsel

DP:yg

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cc: Mr. David Gau MIC:63
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Mr. Todd Gilman MIC:70