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Executive Director

February 26, 1998

Re: Assessment of Private Railroad Cars

Dear Mr.

I am writing in reply to your letter of October 14, 1997 addressed to Mr. Jim Williams, in which you request a letter explaining the Board's method of assessing certain railroad cars subject to a railcar mark usage agreement. I hope you will excuse the delay in responding. Jim Williams has retired, and I am responding to certain inquiries he did not answer before his departure.

I have a copy of the agreement entitled "Railcar Mark Usage Agreement" entered into between ("Sierra") and ("MRC") in November 1997. Based on this document and your letter I summarize the relevant facts as follows: You have entered into a contract with MRC whereby MRC or its indirect or direct assignee leases the use of Sierra's reporting mark for 50 flatcars for a period of three years. MRC will lease the flatcars to other railroads and industrial shippers and MRC will receive all revenue with respect to ownership, use, lease or operation of the flatcars. MRC is also liable for the payment of all property taxes assessed against the flatcars. Under this arrangement, you inquire as to whether the flatcars would be assessed as private railroad cars on a days-in-state basis or whether they would be considered Sierra's shortline railroad property and, therefore, assessed at their full value regardless of their location.

It is our opinion that the flatcars would not be part of Sierra's shortline railroad operating property merely because they carry Sierra's Association of American Railroad ("AAR") mark. If they were leased to Sierra and used in Sierra's railroad operations, however, they would be. If the flatcars are not leased to Sierra and assuming that MRC is a non-railroad entity, then the flatcars would be assessed and taxed as private railroad cars if they are leased to a non-railroad entity. However, if the cars are leased to a railroad operating in California and used by that railroad in the operation, maintenance, construction or reconstruction of its property, then they would be assessed and taxed as part of that railroad's operating property.

Law and Analysis

Revenue and Taxation Code section 11203 provides in part that

(a) "Private railroad car" includes any railroad rolling stock intended for the transportation of any persons, commodity, or material, operated on the railroads of this state, which car is owned by a person other than a railroad or the National Railroad Passenger Corporation. The car's Association of American Railroad's, or successor organization's, reporting mark shall be rebuttably presumed to be the mark of the car owner.

Establishing ownership is the initial step in determining whether a rail car has private railroad car status, and ownership by a railroad is disqualifying. If a car bears a railroad's AAR mark, then subdivision (a) creates a rebuttable presumption of ownership in that railroad. Thus, use of Sierra's mark creates a rebuttable presumption of ownership of the flatcars in Sierra. However, in this case, the fleet management contract or contracts and title documents would likely demonstrate ownership of the flatcars in MRC sufficient to rebut the presumption of Sierra's ownership. If the presumption is rebutted, and assuming that MRC is a non-railroad entity, then the first requirement for eligibility for private railroad car status is satisfied.

Exclusions from private railroad car status are set forth in subdivision (b) of section 11203. Subpart (3) of subdivision (b) provides that the exclusion applies to "[c]ars owned by or leased to any railroad company operating in this state, or by any railroad company operated as a part of the same railroad system as the company operating in this state, and used by the railroad company in the operation, maintenance, construction, or reconstruction of its property and assessed and taxed in this state as a part of the property of a railroad company operating in this state." According to the recital of the Agreement, MRC contemplates leasing flatcars to railroads which, therefore, may preclude some or all of those flatcars from being classified as private railroad cars. As provided in subpart (3), private car status also depends upon whether the lessee railroad operates in California and whether the leased flatcar is assessed and taxed as part of the lessee's California railroad operating system property.

Very truly yours,



Louis Ambrose  
Tax Counsel

LA:ba

cc: Mr. Dick Johnson  
Mr. Ramon Hirsig  
Ms. Jennifer Willis

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