

June 23, 2006

FEDERAL EXPRESS

Ms. Catherine Wurst
State Board of Equalization
Board Proceedings Division
450 N Street
MIC:81
Sacramento, CA 94729-0081

Re: PaFinCo SRSEAA 100-017337: Case 217918

Dear Ms. Wurst:

The United Association of Equipment Leasing ("UAEL") respectfully submits this letter in support of Petitioner Pacifica Capital's appeal before the Board of Equalization ("BOE") regarding the matter identified as Case 217918.

Regarding the main issue in this case, UAEL agrees with Petitioner that substance should govern over form in determining whether an assignment of a lease constitutes a sale for sales tax purposes. Petitioner states that when this issue arose back in the 1980's, BOE senior staff advised members of our industry that substance should govern over form in determining sales tax on such assignments. Annotation 330.1878, which the BOE adopted in 1987, clearly supports Petitioner's statement concerning the history of the substance-over-form approach. Moreover, to our knowledge, the substance-over-form approach is consistent with the approach adopted by the taxing authorities in state jurisdictions across the country.

Consistent with the firmly established substance-over-form approach, UAEL encourages the BOE to reach the following conclusions on the facts, as Petitioner states them in this case: (a) when an equipment lessor assigns a tax-paid true equipment lease to an assignee but in fact retains the residual despite contrary language in the assignment contract, the assignment does not constitute a second sale of the equipment and no second tax is due; and (b) when an equipment lessor assigns a tax-paid true equipment lease to an assignee but does not in fact retain the residual, a second sale of the equipment does occur but the lessor is entitled to a deduction for tax paid on the equipment in connection with lessor's purchase of the equipment from the vendor, when the assignment occurs quickly after execution of the lease and is reflective of the assignee's prior commitment.

To hold otherwise would simply encourage taxpayers to pay on the stream as opposed to upfront in order to avoid double taxation. In our estimation, prudent tax policy would

Ms. Catherine Wurst
State Board of Equalization
June 23, 2006
Page 2

instead encourage taxpayers to pay upfront to afford the State the present value of the sales taxes and to eliminate the risk of default or delinquency.

Regarding the secondary issue of assessing sales tax on documentation and inspection fees in connection with \$1 purchase option leases, UAEL encourages the BOE to follow its historical approach described by Petitioner, as opposed to the audit staff's determination. If the BOE decides to begin assessing sales tax on such documentation and inspection fees, the BOE should notify the industry of the change in policy before imposing it.

Sincerely,
UNITED ASSOCIATION OF
EQUIPMENT LEASING

By: _____
Joseph G. Woodley
Executive Director