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Leasing Equips America

Ms. Catherine Wurst
State Board of Equalization
Board Proceedings Division - MIC:81
450 N Street
P.O. Box 942879
Sacramento, CA 94729-0081

May 12, 2006

Re: Pafinco SRSEAA 100-017337: Case 217918

Dear Ms. Wurst:

The Equipment Leasing Association hereby submits this letter in support of Petitioner Pacifica Capital's appeal before the Board of Equalization in connection with the above matter.

ELA agrees with Petitioner that substance should govern over form in determining whether an assignment of a lease constitutes a transaction for sales tax purposes. The facts and circumstances in determining substance of a lease as a financial transaction are contained within Regulation 1660 – Leases of Tangible Personal Property – In General. As set forth in Reg. 1660 (2)(A) and (3) (A), the facts and circumstances of a lease regarded as a security and a financing agreement should be carried forward in substance when determining if ancillary assignment transactions are a financial security agreement rather than a transaction for sales tax purposes. Reg. 1660 (9) addresses assignments on leases that are 'sales' and 'purchases', however, it provides only general and minimal guidance on leases that are not 'sales' and 'purchases' and is silent on assignments on leases that are regarded as a security and financing agreement.

We request BOE to carefully consider the facts and circumstances related to the assignments and find, as we do, that in substance the transactions wherein taxpayer retains the end of lease value in the equipment (referred to as 'residual' in taxpayers arguments as) should be regarded as a security agreement to secure financing. In the matter of the assignments wherein the taxpayer does not retain any benefits of ownership, we ask you to carefully consider the intentions of the taxpayer at the inception of the transaction. Moreover, we urge BOE to resist an opinion on form that is inconsistent application of substance in a series of related ancillary transactions as it puts California lessees at risk of duplicative tax on their equipment leases.

With regard to the secondary issue in the case, ELA believes that if the BOE decides to begin assessing sales tax on the documentation and inspection fees on a transaction that is regarded as security or financial agreement under Regulation 1660, equity would dictate that the BOE notify the industry of the change in policy before implementing it so that taxpayers are not caught unaware.

For these primary reasons, we respectfully support Petitioner's position in this case.

Sincerely,

Dennis Brown
Equipment Leasing Association