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November 20, 1991

FTB Notice 91-4
410:BRL:CN-91-962

Re: Leasing Activities and Financial Corporations

Advice has been requested as to whether a corporation whose principal business activity is the finance leasing of tangible personal property is properly classified as a financial corporation under California Revenue and Taxation Code §23183.

Subdivision (b) of Revenue and Taxation Code Section 23183, added by AB 66, Stats. 1979, Ch. 1150, Sec. 14.52, provides:

(b) For purposes of this article, the term "financial corporation" does not include any corporation, including a wholly-owned subsidiary of a bank or bank holding company, if the principal business activity of such entity consists of leasing tangible personal property.

Ambiguity exists in subdivision (b) of Section 23183 by the Legislature's use of the phrase "leasing tangible personal property" because the Bank and Corporation Tax Law does not define "leasing." Accordingly, the wording of the statute is unclear in that it cannot be determined from that wording alone whether a corporation principally engaged in any activities characterized by that corporation as "leasing" is intended to be excluded from the definition of financial corporation, or whether the exclusion applies only to those corporations engaged in non-financial leasing activities.

Given the ambiguity, it is necessary to construe subdivision (b) of Section 23183 so as to give full implementation to the Legislature's intent in adopting that provision. Intent expressed in Section 20 of Chapter 1150, and elsewhere, indicates that AB 66 reaffirmed the Legislature's "longstanding purpose" of ensuring "competitive parity" and "equal tax treatment" of banks and financial corporations. Such intent would be frustrated if subdivision (b) were read to prevent a corporation whose principal business activity consists of finance leasing of tangible personal property in substantial competition with national banks from being classified as a financial corporation. (See Appeal of Avcar Leasing, Inc., Cal. St. Bd. of Equal., March 31, 1982;

NOTE: ((---)) = Indicates obsolete information.

M & M Leasing Corp. v. Seattle First Nat. Bank, 563 F.2d 1377, 1382 (9th Cir. 1977).)

A corporation whose principal business activity is the finance leasing of tangible personal property will therefore be classified as a financial corporation because it predominantly deals in money or moneyed capital in substantial competition with the business of national banks. (See 18 Cal.Code Regs. §23183.)

DRAFTING INFORMATION

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