

# ARTHUR ANDERSEN

July 29, 1997

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Arthur Andersen LLP

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Multistate Tax Commission  
Suite 425  
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414 271 5100

Re: Task Force IV, Sales/Use Tax Nexus Guideline

Dear Paull:

On the July 15th teleconference for Task Force IV, Sales/Use Tax Nexus Working Group, I indicated that I would attempt to locate information regarding the tax and financial statement definitions/classifications of an operating lease. While thorough research would have uncovered volumes of materials, the highlights of my quick research are below.

## Tax

It appears that the IRS has developed one set of rules for determining who owns property subject to a simple lease (Rev. Rul. 55-540, 1955-2 C.B. 39) and another set of rules for determining the ownership of property in leveraged leases (Rev. Proc. 75-21, 1975-1 C.B. 715; Rev. Proc. 75-28, 1975-1 C.B. 752). Nonetheless, no general rule, applicable to all cases, can be laid down. Each lease must be judged independently of any other leases. The facts and intent of the parties in each case will determine its classification.

The courts and the IRS have developed some general guidance on the issue of classifying leases; however, these guides are used when there is absence of compelling factors of intent by parties for a rental agreement.

Enclosed are copies of Rev. Rul. 55-540 and Rev. Proc. 75-21.

## Financial Statements

For financial statement purposes the criteria for classifying a lease as a capital lease or a financing lease is contained in Statement of Financial Accounting Standards No. 13, a copy of which is enclosed.

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Also enclosed is a copy of the section of the BNA Tax Management Portfolio 545, Equipment Lease Characterization, addressing the relevance of financial accounting treatment. The remainder of this lengthy portfolio should be consulted for further information regarding the tax treatment and classification of operating leases.

If you have any questions regarding the enclosed materials, please contact me at (414) 283-3621.

Very truly yours,

ARTHUR ANDERSEN LLP



By

Karen J. Boucher

Enclosures

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