



STATE BOARD OF EQUALIZATION

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June 9, 1989

BURTON W. OLIVER
Executive Director

[S]
Staff Accountant

[C]
XXXX --- Parkway, Suite XXX
--- ---, --- XXXXX

Re: S- -- XX-XXXXXX

Dear Ms. [S]:

This is in reply to your April 14, 1989 letter regarding the application of sales tax to charges by [C]. You noted the following facts:

“[C] purchases computer hardware and sublicensed software, and then resells it to hospital laboratories. The hospitals pay for routine maintenance as well, which is provided by our third party equipment vendors. Our clients also purchase canned licensed software from [C]. A monthly support fee for each module is billed to the client for hotline assistance, etc. These charges are also separately stated on an invoice.

“Some other items sold to our clients include miscellaneous supplies and repair parts.

[C] employees travel to the client sites in order to prepare the site and install the hardware and software. We bill the client for the actual travel expenses on a separate invoice as they are incurred. These expenses are airfare, lodging per diem, and ground expenses.

“Also, we bill clients for transportation charges which include Federal Express, United Parcel Service, and third party equipment vendors that [C] uses to deliver equipment, media, etc. to the client sites.”

Given this information, you have provided a questionnaire and asked that we note whether each itemized charge is taxable or nontaxable. Because of the complexity of the Sales and Use Tax Law, we are unable to provide you with a simple "yes" or "no" answer to the taxability of your charges. Therefore, we will provide the following explanation.

Sales or use tax applies to [C]'s retail sale of computer hardware, miscellaneous supplies and repair parts, and pre-written licensed and sublicensed software.

If the client is required to purchase a maintenance contract as a condition of [C]'s sale of the property, then tax applies to [C]'s charge to the client for the maintenance contract. The application of tax to [C]'s furnishing of parts pursuant to a maintenance contract is provided in Sales and Use Tax Regulation 1546, Installing, Repairing, Reconditioning in General. Assuming that the monthly support fee for the hotline assistance is also a mandatory charge to the client, tax applies to such charge.

You noted that [C] charges its clients for travel expenses of [C]'s employees who travel to a client's site to prepare the site and install the hardware and software. As noted in Regulation 1546 at subdivision (a):

"Charges for labor or services used in installing or applying the property sold are excluded from the measure of the tax. Such labor and services do not include the fabrication of property in place."

"Charges for testing a pre-written program on the purchaser's computer to insure that such a program operates as required are installation charges and are nontaxable. (Sales and Use Tax Reg. 1502 (f) (1) last paragraph.) Since [C]'s charge to the client for the employees' travel expenses is attributable to both site preparation and installation, [C]'s charge to the client for the travel expenses must be apportioned between any taxable charges for site preparation and the nontaxable charges for installation of the property sold.

Tax does not apply to [C]'s separately stated charges for transporting property from [C]'s place of business or other point from which shipment is made directly to the purchaser. The application of tax to [C]'s transportation charges is provided in Sales and Use Tax Regulation 1628, Transportation Charges.

Finally, you asked whether the tax rate varies among cities and counties. Certain districts in California impose a transactions and use tax which is in addition to the general six percent state and local sales and use tax. Enclosed in a copy of the Board's Pamphlet 44, Tax tips for District Taxes, and Pamphlet 44-A which provides a list of the various districts which impose the additional taxes.

[S]
[C]

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We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD/smt:1421C

Enclosures: Regulation 1502/ 1546, 1628
Tax Tip Pamphlets 44 and 44-A