

**STATE BOARD OF EQUALIZATION**1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

916/445-2705

November 26, 1980

Mr. R--- S. B---  
P---, B---, L--- & W---  
--- ---Plaza, Suite XXX  
XXXX --- --- East  
--- ---, CA XXXXX

Dear Mr. B---:

Re: S--- of CA, Inc.  
SR -- XX XXXXXX

Your letter of September 22, 1980 summarizes the nature of your client's business as follows:

“When a customer of S--- first subscribes for the S--- service, S--- installs an electronic decoding device (the ‘decoder’) in the subscriber's premises by directly attaching the decoder to the subscriber's designated television set. During certain hours of the week, S--- causes its television programming, consisting primarily of major motion pictures, to be broadcast over the facilities of Channel 22 (K-WBY) in Los Angeles, California. The television signal is encoded or ‘scrambled’ electronically, so that only television sets having the S--- decoder attached thereto can unscramble the sound and picture and thereby obtain the S--- programming.

S--- charges a monthly fee of \$6.00 for the rental of the decoder, and an additional \$13.95 for provision of the programming over Channel 22.

In addition a refundable security deposit may be required.

The characterization and organization of the items in the subscriber agreement (copy attached) and the discussion in your letter of inquiry (copy also attached) cause us to conclude that S--- is required to collect and remit applicable use tax measured by (computed upon) the \$6.00 per month rental charge for the rental of the decoder to S---'s subscribers (assuming that S--- does not hold the decoder's on a tax-paid basis). We conclude also that no sales or use tax is due from S---

or its customers as a result of the monthly fee (currently \$13.95) for the provision of pay tv programming broadcast over the facilities of Channel 22. Further we believe that no sales or use tax results from the payment of a refundable deposit by the customer to S--- at the initiation of the contract. This last conclusion is based on the fact that the refundable deposit is intended to provide S--- with security for payment and performances of the subscriber in general and is not primarily paid to or by the subscriber to secure possession of the decoder which S--- rents to the subscriber. This conclusion is supported by the fact that the decoder's cost \$250 while the security deposit is currently but \$50.

Very truly yours,

Philip R. Dougherty  
Tax Counsel

PRD:ba