



STATE BOARD OF EQUALIZATION

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Executive Director

July 18, 1995

Mr. M--- -, M---
Senior Accountant
C--- C--- S---
XXXX W. --- --- Boulevard
Suite XXX
---, California XXXXX

Re: Your letter dated June 26, 1995
Account No. SR – XX-XXXXXXX

Dear Mr. M---:

This is in reply to your June 26, 1995 letter regarding the application of sales tax to a "software license transfer fee."

In your letter, you state that C--- C--- S--- is a developer of financial database software. One of C---'s customers has been using software, purchased from C---, for several years. This customer paid sales tax reimbursement on the original software license when first purchased. The software is licensed to be used on only one computer system.

This client has recently upgraded its computer hardware to new equipment. C--- charged the client a software license transfer fee to allow it to move its software to the new equipment. You ask if this software license transfer fee is subject to tax.

Sales and Use Tax Regulation 1502(f)(1) provides, in part:

. . . Tax applies to the sale or lease of the storage media or coding sheets on which or into which such prewritten (canned) [computer] programs have been recorded, coded, or punched

(B) Tax applies to the entire amount charged to the customer. Where the consideration consists of license fee, all license fees, including site licensing, and other end user fees, are includible in the measure of tax

In Sales and Use Tax Annotation 120.0552, the Board of Equalization's legal staff took the position that a license fee charged by a software provider (which is not imposed for the initial license or transfer of software in the form of tangible personal property but is imposed as a license to expand the use of the software previously furnished or to license the software previously furnished for additional periods) is subject to tax.

It is our opinion that a software license transfer fee charged to a client to permit that client to utilize the software on new computer equipment is subject to tax if the original license fee was subject to tax when the software was originally furnished.

Very truly yours,

Thomas J. Cooke
Staff Counsel

TJC/cmm

cc: Mr. David H. Levine
--- District Administrator (--)