330.3657

Torrance - Auditing (JFL) June 24, 1988

Headquarters - Legal (RLD)

[redacted]

This is in reply to your April 11, 1988 memorandum regarding the application of use tax to the lease of videocassettes under [redacted] leasing program. We understand that [redacted] a corporation related to [redacted] sells videocassettes to [redacted] has two leasing programs, respectively called the [redacted] Program and the [redacted] Program. You sent a copy of a [redacted] "Operations and Accounting Considerations" memorandum which provides, in part:

> "1. [redacted] is 100% owned by [redacted], and utilizes the fulfillment and operations equipment of [redacted]
>
> The company exists to provide [redacted]tes to libraries in either of two methods, as follows:
>
> A. The [redacted] Program: [redacted] sells a subscription to a library, to furnish a fixed number of videocassettes as a 'Starting Collection', and provides a given number of 'Quota Points' (convertible to videocassettes according to a schedule of points applicable to list prices). The in-library inventory is maintained at a fixed number of videocassettes (the library returns a number each month, equal to the quantity supplied). Service period is one year. Subscriptions may be

renewed, at the same price, for each additional year's service, which is identical excluding the provisions of the 'Starting Collection'.

B. The Program: places videocassettes in a library on 'consignment', in return for the library's agreement to rent the videocassettes at fees and according to rules established by The library remits 80% of its rental and fee revenue to retaining 20% as its cost reimbursement. Collections are maintained at approximately their original size, by the library's returning an equal number of cassettes when new titles are supplied."

Your question concerns only the application of tax to charges by libraries under the Program. We assume that, under the Program, the libraries make loans of videocassettes for no charge.

We assume that under the Program the leases of the videocassettes that are in libraries are rentals or leases for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the videocassette and that, therefore, the leases are included within the definition of "sale" under Revenue and Taxation Code section 6006, subdivision (g)(7).

has proposed that, under the Program, when sells videocassettes to , and contracts with libraries for the libraries to rent the videocassettes to the public on a consignment basis, the taxable transaction should be the sale by to We disagree. We assume that the libraries have the power to lease the videocassettes to the public without any further action by In such case, although the transactions in issue here are leases, rather than outright sales, we believe that the application of tax should be consistent with the Board's position as to consignment sales as expressed in Sales and Use Tax Regulation 1589, Consignees and Lienors of Tangible Personal Property for Sale; that is, the libraries, which make the leases to the public, are the retailers responsible for collecting use tax on such leases.

Sales and Use Tax Regulation 1660, Leases of Tangible Personal Property-In General, provides the application of tax to leases of videocassettes under section 6006, subdivision (g)(7):

> "On and after September 1, 1983, the rental or lease of a video cassette, videotape, or videodisc for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the video cassette, videotape, or videodisc is a sale or purchase and tax applies measured by rental receipts. Tax applies measured by rental receipts regardless of whether the property is leased in substantially the same form as acquired and regardless of whether sales tax reimbursement or use tax has been paid by the lessor with respect to the purchase price of the video cassette, videotape, or videodisc. If the property was rented, leased or otherwise used prior to September 1, 1983, no refund, credit, or offset for any sales tax reimbursement or use tax paid on the purchase price will be allowed against the tax measured by the lease or rental price after September 1, 1983."

The regulation expresses the intent of the enactment of Revenue and Taxation Code section 6006, subdivision (g)(7), that private noncommercial leases of videocassettes, videotapes, and videodiscs are subject to tax, and the lessor cannot avoid such tax by paying sales tax reimbursement or use tax on the purchase of such property. In summary, we believe that the libraries are responsible for collecting use tax on their leases of videocassettes under the program.

You also noted that has requested permission to act as a section 6015 retailer in the event that the libraries are deemed to be the retailers. We believe that making a section 6015 retailer would provide an efficient means of administering the tax liability in this case. Accordingly, we believe that you should take whatever steps are necessary to assist in becoming a section 6015 retailer.

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

PLD:sr

cc: Mr. E. L. Sorensen, Jr.