

Memorandum

Legal Division MIC: 85

210.0430

To : T. Raboy
Return Review Section

Date: December 30, 1993

From : Rachel M. Aragon
Staff Counsel

Subject: Application of tax to employee rentals
O--- L--- V---, Inc.

SY --- XX-XXXXXX

This is in response to your memorandum dated October 16, 1993. You enclose a copy of a letter from O--- L--- V--- which states:

"In order for our employees to rent at no charge, our computer program charges rental fees plus tax so we then have to reverse the charges. This is an employee benefit. No actual money is exchanged."

You want to know what the tax consequence is on the transaction as described by O--- L--- V---.

The rental or lease of video cassettes, video tapes, and video discs 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, video tape, or video disc is a sale or purchase and tax applies measured by the rental receipts. (Rev. & Tax. Code §§ 6006(g)(7) & Reg. 1660(d)(2).) Thus, the rentals are a continuing sale and purchase and we assume the lessor (O--- L--- V---) is collecting tax from its customers when it rents them the videos.

In regard to the videos O--- L--- V--- is lending its employees at no charge, the general rule states that if a lessor of tangible personal property who collects use tax from the lessees measured by the rental receipts makes any use of that property other than incidental use, the lessor is liable for use tax measured by the purchase price of that property. A different rule is found in Regulation 1669(f)(1)(B) which states that a purchaser of tangible personal property who gives a resale certificate and uses the property both for demonstration or display while holding it for sale in the regular course of business and uses it partly for other purposes, such as personal use by its employees, must report tax on such use measured by the fair rental value for the period of such other use.

T. Raboy
O--- L--- V---
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O--- L--- V--- is holding these video tapes for demonstration and display, and is actually selling them (in continuing sales). Its use of the tapes (by lending them to its employees) is not inconsistent with its continued resale of them. We believe under these facts, that the rule of Regulation 1669 applies. O--- L--- V--- owes tax measured by fair rental value when lending tapes to its employees. In this case, it appears that fair rental value would be the amount O--- L--- V--- would charge a non-employee for rental of the tape. Please note that our conclusion herein applies to these specific facts, and under other facts the appropriate measure could be the purchase price pursuant to Regulation 1669(d)(2).

If you have any further questions please feel free to write again.

RA:cs

cc: San Diego - District Administrator