

Memorandum

280.0670

To: Business Taxes Attorneys
Hearing Officers

Date: May 14, 1984

From: Gary J. Jugum

Subject: Sale - - Return or Destroy

We recently received an inquiry from a computer manufacturing company which is planning to transfer personal computers to selected educational institutions in this state. The recipient institution is free to use the property as it sees fit. However, the institution is under the obligation to return the property to the manufacturer or destroy the property when the property becomes obsolete. By terms of the transfer, title is said to pass to the educational institution outside this state. The property is shipped by the manufacturer from a point outside this state to the educational institution in California.

The question is, are these gifts or are these loans? If there is a gift, the manufacturer owes no California use tax because the gift occurs out of state. If there is a loan, then the manufacturer owes use tax because there is a use in this state.

--- --- and I discussed this matter and concluded that there is a gift subject to a condition and not a mere loan. The critical fact is that although the transferee may not alienate the property, the transferee has no absolute duty to return the property but may alternatively destroy the property upon obsolescence. If there was an absolute duty to return the property we would treat the transaction as a loan (despite the title provision) because an absolute obligation to return would be incompatible with a transfer of title.