

# Memorandum

330.3555

**CONFIDENTIAL**  
**ATTORNEY-CLIENT PRIVILEGE**

**To** : Mr. Dennis Fox, Supervisor (MIC:40  
Audit Evaluation & Planning

**Date:** February 28, 1994

**From** : Rachel M. Aragon  
Staff Counsel

**Subject:** Lease of Installed Security System  
D--- M--- Properties

This is in response to your memorandum dated January 10, 1994, to Mr. Gary Jugum. You ask how tax applies to alarm systems. You attached a letter from D--- M--- Properties which states they have a 126 months (10.5 years) lease agreement with N--- M--- S--- Corporation. The letter further states that the lease, including finance charges and monitoring alarm services, is payable at the rate of \$9.95 per month.

Upon reviewing the contract and copies of the invoices, which you attached to your memorandum, we find no mention of finance charges in either. The contract does not separately state any charges for the monitoring alarm services and those services are not optional. "Exhibit C" of the agreement is entitled "Per Unit Contract Buy-Out Schedule" and appears to be an option to purchase the alarm system at specified times during the contract term (excluding communication and monitoring equipment). The taxpayer thinks it should only pay sales tax on the amount attributable to the lease of the alarm system and not to the finance charges or for charges for the monitoring services.

You refer to Annotation 330.1920, which explains when contracts for the installation and service of burglar alarms may be regarded as service agreements instead of leases of tangible personal property. If this were a service contract, rather than a lease, the alarm company would be considered the consumer of the property and as such would not be collecting tax on the rental payments. Since the taxpayer is collecting tax on the rental payments, the taxpayer presumably agrees that it is leasing tangible personal property. Thus, this annotation is not applicable. That is, the question here is not whether the taxpayer is leasing tangible personal property or providing a

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service, instead, the issue is the amount of the taxable rentals payable.

Regulation 1660(c)(1)(E) & (F) states that the rentals subject to tax include any payments required by the lease. Excluded from the measure of tax are late charges and interest incurred for failing to pay the rentals timely and separately stated optional [insurance charges,] maintenance or warranty contracts. Since the services for monitoring the alarm (maintenance) are not optional or separately stated, the monitoring charges are includible in the measure of tax. The only finance charges which are excludable from the measure of tax are those which are incurred as a failure to make timely payments. Thus, the entire \$9.95 is taxable.

RMA:ljt