

**STATE BOARD OF EQUALIZATION**

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March 28, 1997

Ms. M. H---
Office Manager
I--- Corporation
XXX-XXX --- --- Drive
--- ---, CA XXXXX-XXXX

Re: Account No. SR -- XX-XXXXXX

Dear Ms. H---:

I am responding to your letter dated December 22, 1996 to Mr. Rick Wall of the State Board of Equalization's Return Review Section requesting a legal opinion concerning the application of sales and use tax to I--- Corporation's (I---) "classroom rentals".

You indicate that I--- has a "classroom" at its business site. In the classroom are 9 computer workstations and 1 server. You state, "These are 486 DX2-66 machines with 250MB harddrives or higher and at least 8mb of RAM." Corporations or small businesses (companies) pay I--- a minimum of \$100 a day to bring "students" to use the computers for instruction on the application of various software. I understand that the companies provide their own software and instruction, but utilize I---'s computers. A sample invoice which you enclosed with your letter shows that the companies are billed a flat rate (\$100 on the sample invoice) for each day of "classroom rental".

Your correspondence indicates that the computers in the classroom were purchased for resale and that they eventually will be sold to customers. Since the computers were purchased for resale, I assume for purposes of this opinion that I--- did not pay any sales tax reimbursement or use tax on the purchase of the computers prior to or at the time that they were placed into rental use. I further assume that other than the rental of the computers, no use beyond retention, demonstration, or display of the computers is made by I--- either before or after the rental periods prior to the eventual outright sale of the computers to I---'s customers.

Discussion

Generally, under the California Sales and Use Tax Law, sales tax is imposed on all retailers measured by their gross receipts from retail sales of tangible personal property, e.g., computers, occurring in this state. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax applies to the use of property purchased from a retailer for use in California. (Rev. &

Tax. Code §§ 6201, 6401.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.)

In general, the terms “sale” and “purchase” also mean and include any lease of tangible personal property in any manner or by any means whatsoever, for a consideration (such as money), except for tangible personal property leased in substantially the same form as acquired by the lessor as to which the lessor has paid sales tax reimbursement or use tax measured by the purchase price, or timely elects to pay such tax by reporting and paying it with its sales and use tax return for the period during which the property is first placed in rental service. (Rev. & Tax. Code §§ 6006(g)(5), 6010(e)(5); Reg. 1660(c)(2).) The term “lease” includes rental, hire and license, but does not include a use of tangible personal property for less than one day for a charge of less than \$20 when the privilege to use the property is restricted to use on the premises or business location of the grantor of the privilege. (Rev. & Tax. Code § 6006.3; Reg. 1660(a)(1); cf. Reg. 1502(i).)

In the case of a lease which is a “sale” and a “purchase”, the granting of possession of tangible personal property by a lessor to a lessee is a continuing sale in this state by the lessor and a continuing purchase for use in this state by the lessee. (Rev. & Tax. Code §§ 6006.1, 6010.1; Reg. 1660(b)(2).) Tax on such a lease is measured by the rentals payable. Generally, the applicable tax is a use tax upon the use in this state of the property by the lessee. The lessor must collect the tax from the lessee at the time rentals are paid by the lessee and remit the tax to the Board. (Reg. 1660(c)(1).)

Thus, I---’s “classroom rentals” are considered rentals or leases of tangible personal property, i.e., the computers. Since I--- has paid neither sales tax reimbursement nor use tax on the purchase price of the computers, the leases are continuing sales and purchases subject to tax measured by the rentals payable. When I--- later sells the computers, those sales are also subject to tax. (Rev. & Tax. Code § 6051.)

I hope this information is of assistance. Please write again if we may answer any other questions.

Sincerely,

Sharon Jarvis
Senior Tax Counsel

SJ:rz

cc: Santa Rosa District Administrator (JH)
Mr. R. M. Wall - (MIC: 35)