



STATE BOARD OF EQUALIZATION

September 19, 1983

Mr. W--- J. S---
---, --- & ---
Attorneys at Law
--- Floor, --- Building
XXX --- Street
--- ---, CA XXXXX

Re: D---, Inc.

SR -- XX-XXXXXX

Dear Mr. S---:

This is in response to your letter of July 1, 1983. We regret any inconvenience caused you by our delay in responding. You asked that we consider the following material pertaining to the "Q---" system which is provided by D--- Inc. (D---) and render our views as to how the Sales and Use Tax Law applies.

The Q---

The Q--- is a hand-held data processing device which will be able to receive up-to-the-minute quotations from various securities and commodities exchanges. Approximately the size of a pocket calculator, the Q--- will be able to provide a user detailed information concerning present market conditions with respect to any stock on a particular exchange.

The information received by the Q--- device is first collected and processed by D---'s computer, then transmitted to the signaling station and broadcast over an FM sideband. In the [California] area, these radio signals will be broadcast under a licensing arrangement with K---. The Q--- has a range of approximately 40 to 50 miles using a fixed and oriented antenna and 15 to 20 miles using a built-in antenna. If the Q--- device is outside this range, a telephone modem will be available later this year which will allow the Q--- user to receive information concerning stocks previously placed in the machine's memory.

The Q--- device will be available either for purchase or lease. At the present time, it is anticipated that the purchase price will be \$600.00 and the monthly lease fee will be \$55.00. In addition, there will be a \$30.00 per month "Database Fee" applicable to both purchases and leases which covers the cost of transmitting and unscrambling the information from the central data station transmitter.

There will be separate "Exchange Fees" for each exchange to which the purchaser or lessee subscribes. While only those stocks listed on the New York Stock Exchange may be available during the initial phase of operation, it is anticipated that this type of information will be available from several different exchanges over the next few months. Up-to-the minute sports scores for all college and professional sports will also be available in the immediate future at a small additional charge ("Sports Information Fee").

Purchasers may enter into a service contract with D--- to cover maintenance of the Q--- units for an additional charge ("Service Contract Fees"). Lessees of the units may also purchase an optional annual waiver of liability covering damage to their units for an additional charge ("Waiver Fees").

Comments

In our opinion, the Q--- device which the customer receives is not automatic data processing equipment within the purview of Regulation 1502 (copy enclosed). We do not consider the Q--- device to be either a computer or the peripheral equipment of a computer [see Regulation 1502(b)], rather, it is in the nature of a receiver, similar to an FM radio or television set.

Sales of the device to D--- customers are taxable sales of tangible personal property, the measure of which is gross receipts from such sales (see Revenue and Taxation Code Section 6012). In our opinion, the taxable measure with respect to sales of the units is \$600.00. We consider the \$30.00 database fee as being a nontaxable service charge.

With respect to leases of the devices, we assume D--- does not manufacture the units, will be purchasing them ex-tax for resale and, will be leasing them in substantially the same for as acquired. Under such circumstances, tax should be reported by D--- based on the \$55.00 monthly rental fees [Regulation 1660(c), copy enclosed]. The remaining data base, exchange, and sports information fees, as well as the optional service contract and waiver fees are considered nontaxable service fees.

We hope this has answered your questions. If further assistance is required, don't hesitate to contact us again.

Very truly yours,

Les Sorensen
Tax Counsel

LS:rar

Enclosure