



STATE BOARD OF EQUALIZATIONPO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 445-6450

March 12, 1992

Ms. N--- K---
Accountant
XXX Corporation
XXXX --- ---
P.O. Box XXXX
---, VT XXXXX-XXXX

SC OH XX-XXXXXX

Dear Ms. K---:

This is in reply to your November 6, 1991 letter regarding the application of sales tax to various transactions you listed.

You sent a list of "products" and a space for us to indicate whether or not the charge for the product is taxable. We cannot so indicate, because tax would apply or would not apply to charges for the product depending upon further facts. However, we will provide a response to each of the transactions you noted. If you need further information, please provide the facts of the specific transaction.

"SOFTWARE-----
"Canned' Software"

Charges for canned software are subject to sales tax. See Sales and Use Tax Regulation 1502, Computers, Programs, and Data Processing, subdivision (f)(1).

"CONSULTATIONS/SEMINARS-----
CONSULTATIONS WITH OUR CLIENTS
AND TRAINING SEMINARS HELD ON SITE
AND AT OUR OFFICES"

If you merely consult with a client or provide training seminars and do not transfer tangible personal property in connection with the consultation or training, your charge is nontaxable. Your charges are taxable if the services are provided as part of the sale of tangible personal property.

“SPECIAL PROGRAMMING

SPECIAL PROGRAMMING THAT IS DONE
IN OUR OFFICES AND SENT TO CLIENTS VIA
THE PHONE LINES USING A MODEM”

If you provided information to a client by remote telephone modem, the charge is nontaxable.

“S/W MAINTENANCE

A MONTHLY CHARGE BILLED TO OUR CLIENTS FOR
TELEPHONE SUPPORT AND PERIODIC UPDATES OF
SOFTWARE”

The charge for the software maintenance contract is taxable. If your customer cannot purchase the periodic updates without obtaining the consultation, the charge for the consultation is also taxable. If the purchaser is not required to obtain the consultation, the charge for the consultation is nontaxable. The charge for the maintenance remains taxable.

“INSTALLATION

THE PROCESS OF INSTALLING SOFTWARE
AT OUR CLIENTS SITES”

You did not describe what you mean by “installation” of the software. A retailer’s charges for installing the tangible personal property sold are excludable from the gross receipts of the sale. (Rev. & Tax. Code § 6012, subd. (c)(3).) However, the only charges which appear to be nontaxable installation charges beyond the simple task of inserting the software medium (disk, tape, etc.) into the computer is the testing of the program on the purchaser’s computer to insure that the program operates as required. (Reg. 1502, subd. (f)(1)(E).) Tax applies to charges for keying data into the purchaser’s computer. (Reg. 1502, subd. (b), Data Entry (Including Encoding) Input.)

“FREIGHT

FREIGHT/SHIPPING CHARGES THROUGH COMMON
CARRIERS BILLED OUT AT COST”

Sales and Use Tax Regulation 1628, Transportation, provides the application of tax to freight charges. Generally, tax does not apply to separately stated charges for transportation from the retailer’s place of business or other point from which shipment is made directly to the purchaser, but the exclusion cannot exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. If the transportation is by facilities of the retailer, or if the property is sold for a delivered price, the

exclusion is applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

“TELEPHONE

CHARGES THAT ARE BILLED TO
THE CLIENT TO RECOVER OUR TELEPHONE
EXPENSES”

Your charges to the client for your telephone expenses are includible in the gross receipts of your sale of tangible personal property to the client. (Rev. & Tax. Code § 6012, subd. (a)(2).)

“TRAVEL

TRAVEL EXPENSES, INCURRED DURING VISITS TO
OUR CLIENTS SITES THAT WE BILL OUT
AT COST”

Your travel expenses and any other expense you incur is includible in the gross receipts of your sale to the customer. (Rev. & Tax. Code § 6012, subd. (a)(2).)

“HARDWARE MAINTENANCE

A MONTHLY OR YEARLY MAINTENANCE CHARGE
FOR REPAIRS TO HARDWARE.”

We are enclosing a copy of Sales and Use Tax Regulation 1655, Returns, Defects and Replacements. The application of tax to charges for replacement parts furnished pursuant to warranties is provided at subdivision (c). Your charge for a mandatory warranty is includible in the taxable gross receipts of your retail sale of the tangible personal property. Your charge for an optional warranty is not subject to tax.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr
Encs.