

**STATE BOARD OF EQUALIZATION**

(916) 445-8900

January 17, 1983

Mr. R--- E. H---
XXXXX --- ---
---, CA XXXXX

SR -- XX-XXXXXX

Mr. H---:

Your letter to the Return Review Unit regarding your first quarter, 1982, return has been referred to this office for response. We regret that this reply has been unavoidably delayed.

We understand that you rent "C---" computer terminals to physicians for use in their offices. The equipment is used to provide computer analysis of electrocardiograms (EKG's) performed in the physician's office. The terminal is described as a three channel, ten wire, twelve lead ECG instrument which connects directly to the patient to take readings on the twelve leads automatically. Patient age, weight and other data are entered via a keyboard and included on the printed report. The terminal is connected via telephone lines to the C--- central computer. The terminal automatically dials the computer and transmits the collected ECG data. In seconds the computer responds and the terminal prints a complete analysis of the ECG. In addition, a board-certified cardiologist is on call at the computer site to review results and assist in interpreting the report. A physician can call the computer site and discuss the report with the specialist.

You charge a flat amount per month for the equipment. In addition, a separate charge is made for each time that the equipment is used to provide an ECG analysis. You make no charge for telephone consultations with the cardiologist. Your first quarter, 1982, return claimed a deduction of \$1,259 for "Process Fees" which were the charges you mad, in addition to the flat monthly amounts, for usage to secure ECG analyses. You claimed the deduction on the theory that these were charges for exempt professional services.

Enclosed for your reference is a copy of Regulation 1502 and a Public Notice, dated October 1982, explaining AB 2932. Please note that the tax rules applicable to custom computer programs, found in Regulation 1502(f)(2), have been changed by AB 2932.

Regulation 1502(j) generally explains the application of tax to the rental or lease of automatic data processing equipment. As stated, the rental receipts from such equipment are subject to tax unless the equipment was acquired tax-paid and leased in substantially the same form as acquired. We assume that is not the case here since we understand that you are paying tax on the flat monthly charges.

The sole question is, therefore, whether the separate charges, which are based upon the number of times the machine is used, are part of taxable rental receipts.

Our research indicates that the staff has previously considered this question in a similar context and we have concluded that the separately stated amounts charged for ECG analysis are service fees. Therefore, the \$1,259 labeled "Process Fees" on your first quarter, 1982, return is not subject to tax and was properly claimed as a deduction from taxable gross receipts.

Very truly yours,

Richard H. Ochsner
Tax Counsel

RHO:jw

Enclosures

cc: Return Review Unit (CR)