



STATE BOARD OF EQUALIZATION

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Executive Director

February 23, 1998

Ms. G--- T---
Z---L--- I--- LLC
Tower X, Xth Floor
XXX --- Street
---, --- XXXXX

Re: Charges for Internet Access
SS - XX-XXXXXX

Dear Ms. T---:

Your December 10, 1997 letter regarding the application of sales tax to Internet service charges was referred by the Franchise Tax Board to this Agency on January 12, 1998 for a response. The State Board of Equalization is responsible for administering the provisions of the Sales and Use Tax Law set forth in Revenue and Taxation Code section 6001 et seq.

You state:

“Z---L--- I---, LLC [(hereafter “Z---L---”)] is a nationwide provider of retail and wholesale Internet Services, offering comprehensive solutions and high quality customer and technical support to individuals, business and other Internet Service Providers.

“Z---L--- will soon be offering Internet Access and providing Internet Services in the State of California.”

We understand you to ask whether your company’s charges to its customers for Internet access are subject to “sales or any other tax.”

Discussion

California imposes a sales tax on a retailer’s gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempted from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use or other consumption of that property in California. (Rev. & Tax. Code §§ 6201, 6401.) A lease of tangible personal property in California is a

continuing sale and purchase unless the lessor leases it in substantially the same form as acquired and has made a timely election to pay California sales tax reimbursement or use tax measured by the lessor's purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1, 6010(e)(5), 6010.1, Reg. 1660(c)(2).) When the lease is a continuing sale and purchase because either or both of the foregoing conditions are not satisfied, the lease is subject to use tax measured by rentals payable. (Reg. 1660(c)(1).) The lessee owes the tax and the lessor is required to collect it from the lessee and pay it to this Board. (Rev. & Tax. Code §§ 6202, 6203, 6204; Reg. 1660(c).)

We assume from your letter that your company does not sell or lease any tangible personal property to its customers in the course of providing its customers with access to the Internet. That is, we assume that Z---L--- does not sell or lease to its customers any of the computer equipment or software necessary to access the Internet, nor provide any manuals, books, or other written documentation to its customers in tangible form. Rather, our understanding is that your company solely provides Internet access as an Internet service provider and does not sell or lease any tangible personal property to its customers. (If our assumptions are incorrect, our answer would be different.) Under these facts, tax does not apply to your company's charges to its customers for Internet access since it is not selling or leasing any tangible personal property.

Please note that there may be other taxes or surcharges (unrelated to sales or use taxes) imposed with respect to your company's charges for Internet access. In that regard, I enclose a copy of the Emergency Telephone Users Surcharge Law. If you have any questions regarding the application of that surcharge, you may direct your inquiry to Ms. Mary Armstrong, Assistant Chief Counsel - Special Taxes, State Board of Equalization, 450 N Street MIC: 82, P. O. Box 942879, Sacramento, CA 94279-0082. The California Public Utilities Commission may also administer taxes imposed with respect to such service. You may contact the PUC at 505 Van Ness Avenue, San Francisco, CA 94102-3298, Telephone: (415) 703-1282. In addition, local jurisdictions may also impose taxes or fees with respect to such services.

If you have further questions regarding the application of the Sales and Use Tax Law, please write again.

Sincerely,

Warren L. Astleford
Senior Tax Counsel

WLA:cl
Enclosure

cc: --- District Administrator (---)