



STATE BOARD OF EQUALIZATION

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Executive Director

April 10, 1997

Mr. R--- I. K---
Director, State Tax
O---
XXX --- Parkway
--- ---, CA XXXXX

Re: O--- Corporation
SY --- XX-XXXXXX

Dear Mr. K---:

This is in reply to your March 14, 1997 letter regarding the application of sales tax to transfers of software by O--- Corporation. You noted the following facts:

“O--- Corporation (O---) is in the business of developing and licensing computer software. Typically, software is transferred to customers under a perpetual license to use in exchange for an initial license fee. For purposes of this ruling, we have used the terms license and sale interchangeably.

“In addition to software sales, O--- also markets optional software maintenance agreements, training and consulting services. O---’s optional software maintenance agreements generally include telephone support, access to electronic bulletin boards and the right to receive product (software) updates.

“On occasion, in lieu of the delivery of software via computer disks, CD-ROMS, or other storage media, O--- may transfer software to customers in California as follows:

- “1. An O--- employee takes the licensed software on a CD-ROM, or other storage device, and travels to the customer’s California business location.
- “2. O---’s employee downloads the licensed computer software from the CD-ROM, or other storage device, directly into the customer’s computer system or onto some other type of computer storage device owned by the customer.

“3. O---’s employee, upon completion of the software download, removes the CD-ROM, or other storage device, from the customer’s premises.

“4. O---’s employee returns to O--- with the CD-ROM, or other storage device; no O--- tangible personal property is left with the customer.”

Given this information, you asked the following:

“1. Is the sale and delivery of licensed software in California as described above subject to California sales or use tax?

“2. Is the sale of optional software maintenance agreements, where software updates are delivered as described above, subject to California sales or use tax?”

We understand that you are asking only for the application of tax to O---’s transfer of software by electronic means as described in the numbered paragraphs. We agree with your conclusion that, when O--- transfers software into the permanent storage memory of a customer’s computer, the transfer is not a sale when O--- accomplishes the transfer by the electronic means you describe, and O--- does not transfer any tangible personal property to the customer. That is true whether the software is an original program or program updates provided to the customer pursuant to an optional software maintenance agreement.

The State Board of Equalization has taken the position that, when a person operates a customer’s computer to transfer information into the permanent storage memory of the customer’s computer, the transaction is not a sale of tangible personal property. The person may also make a nontaxable transfer by sending the information to the customer’s computer by linking the transferor’s computer by cable to the customer’s computer.

On the other hand, we do not agree a nontaxable transfer of software results whenever the transferor downloads the software onto “some other type of computer storage device owned by the customer,” as you noted in sentence 2, above. Clearly, if O--- uses the procedure you describe to transfer O---’s software onto a new diskette, tape, or CD of the customer, O--- would thereby perform fabrication labor on customer-furnished property. The charge for that fabrication labor results in a “sale” under subdivision (b) of Revenue and Taxation Code section 6006.

Mr. R--- L. K---

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April 10, 1997
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If you have any further questions regarding this, feel free to contact me directly.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

cc: --- --- District Administrator - - -