



STATE BOARD OF EQUALIZATION
 450 N STREET, SACRAMENTO, CALIFORNIA
 (PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
 TELEPHONE: (916) 324-2637
 FAX : (916) 323-3387

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February 21, 1997

Ms. [L]
 [L]
 XXXX --- ---
 --- ---, California XXXXX

Re: Deleted Annotation 120.0016

Dear Ms. [L]:

This is in response to your January 14, 1997 letter to Ms. Sharon Jarvis regarding deleted Annotation 120.0016. You ask about the Board hearing that prompted the deletion of this annotation and whether the principles from the first paragraph of this annotation still apply.

Annotation 120.0016 was deleted as the result of a hearing involving [S], Inc. The hearing was held in Culver City, California and took place on November 30, 19XX. You should contact the Board Proceedings Unit at (916) 322-2270 if you are interested in ordering a copy of the transcript from that hearing.

You also ask about the language contained in paragraph one of deleted Annotation 120.0016. That paragraph stated:

“If a seller purchases a software program on disk for resale and transmits the contents of the disk to the customer by remote telecommunications, the seller has made a taxable use of the program, and owes use tax measured by the cost of the program.”

This language is consistent with the Sales and Use Tax Law and is an accurate statement of how tax applies under the facts of that annotation. That is, tax applies on the sales price of tangible personal property purchased under a resale certificate where that property is used inside this state for purposes other than retention, demonstration or display. (See Rev. & Tax. Code § 6094; Reg. 1669.) A person who transmits the contents of a computer disk to its customer is not reselling the disk itself. Rather, that person uses the disk by transmitting the disk's contents and tax applies on that use whether or not that disk is subsequently sold at retail to a different customer.

Annotation 120.0016 was deleted in its entirety based on the second paragraph of that annotation. The deletion of the entire annotation does not mean, however, that the principles set

forth in the first paragraph of that annotation are invalid or are otherwise not followed by this agency. I am recommending that the rule set forth in the first paragraph of deleted annotation 120.0016 be annotated to provide clarification to industry. In the meantime, tax applies to situations like that of the first paragraph whether or not there is a specific annotation.

I hope this answers your questions. If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Tax Counsel

WLA:rz

cc: --- --- District Administrator - (--)
Mr. David H. Levine
Mr. Robert Nunes (MIC: 40)