



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
Ph: (916) 445-6450
FAX: (916) 323-3387

MEMBER
First District

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

November 3, 1994

BURTON W. OLIVER
Executive Director

Mr. J--- P. G---
I---, G--- & C---
--- ---
XXXX --- ---, Suite XXXX
--- ---, CA XXXXX

Re: **Combined L---/W--- M---, Inc.**
SR -- XX-XXXXXX

Dear Mr. G---:

This is in reply to your latest letter you sent by fax dated September 28, 1994 regarding the application of sales and use tax to charges by a vendor to Combined L---/W--- M---, Inc. (the company).

You note that, although your two previous letters characterize the relationship between the vendor and the company as the vendor's leasing a computer system to the company, the parties called the agreement a "service agreement". You also note the vendor does not take or produce an actual photograph for the company. Rather, the vendor digitally stores the image on a disk in the camera and the deletes the data after the process is complete. You then conclude the vendor does not really transfer data to the company.

We believe that, if the vendor transfers possession of a computer to the company, the transaction is a lease regardless of what the vendor and the company call their agreement. Further, if the vendor stores the images on a disk and transfers those images to the company, whether on a disk or by inputting the data containing those images into the computer possessed by the company, the transaction is a sale subject to sales tax. (See Sales and Use Tax Reg. 1502, Computers, Programs, and Data Processing, subds. (c)(2) and (c)(4).)

Mr. J--- P. G---

-2-

November 3, 1994
120.0925

As I noted during our telephone conversations, if you need further information, please provide us with a detailed description of the facts of the transaction.

Very truly yours,

Ronald L. Dick
Senior Staff Counsel

RLD:plh

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