



STATE BOARD OF EQUALIZATION

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October 28, 1982

Ms. T--- M. S---, Tax Analyst
D--- E--- Corporation
XXX --- Street
---, --- XXXXX

SZ --- XX-XXXXXX

Dear Ms. S---:

Your letter of September 1, 1982 requesting advice on the application of tax to computer equipment and software services sold to a government contractor has been referred to this office.

You state, in part:

“D--- is a registered vendor in your state and sells a variety of computer products and services (e.g., computer systems, software, software update and repair services, maintenance service contracts, and will also provide per call service as deemed necessary. The purchaser is a contractor performing on a government contract. My questions on this transaction are:

1. Is the contractor exempt on his purchases by virtue of the fact that he is performing a government contract and, if so, what documentation does D--- need to allow the exemption?
2. Is the contractor exempt when he has a specific purchase order from the government for the purchase of computer equipment and services and is it the intent of the government agency to take title of the equipment when the contract is completed? What documentation is necessary to allow the exemption?
3. What is the taxable status of repair work either under a maintenance contract or on a per call basis while the equipment is being utilized by the contractor under his contract to the government?

4. What is the taxable status of software update services utilized by the contractor for his performance of the government contract?"

The facts presented in your letter are quite brief and our response must, therefore, be general in nature. To aid your understanding of the California tax law, we have included copies of a number of regulations and a related public notice. These are:

Regulation 1502 – Automatic Data Processing Services and Equipment

Public Notice on AB 2932 (October 1982)

Regulation 1546 – Installing, Repairing, Reconditioning in General

Regulation 1614 – Sales to the United States and Its Instrumentalities

Regulation 1667 - Exemption Certificates

Please note that subdivision (f)(2) of Regulation 1502 is no longer the law. Instead, see the public notice describing AB 2932.

We assume that your reference to “government contract” means a contract with the United States. While sales to the United States are exempt under Revenue and Taxation Code Section 6381 the California Sales Tax Law does not contain a general exemption for sales to other government entities, such as states, counties, cities, or special districts. Please review Regulation 1614 for the general rules applicable to sales to the United States.

Our answers to your questions are:

1. No. The mere fact that a purchaser is performing some kind of a U.S. contract will not operate to exempt its otherwise taxable purchases of tangible personal property.
2. No. The sale of property to a U.S. contractor cannot be considered an exempt sale to the U.S. unless the contract provides that title to the property passes to the U.S. before any use by the contractor. (See Business Taxes Law Guide, Annotation’s 565.0020, et. Seq. – United States Contractors.) The resolution of questions in this area tend to be highly technical and depend upon the specific terms of the contract in question and the associated facts.
3. The charges for equipment repair work under a maintenance contract which is a mandatory part of a sale of computer equipment is subject to tax. (See Regulations 1502(k) and 1546(b)(3)(B).) Where the repair services are furnished under an agreement which is not a part of the equipment sale then the provisions of Regulation 1546 generally explain the application of tax.

4. The status of “software update services” depends on the facts of the case. We assume that this term refers to revised computer applications programs which are furnished to the contractor in tape or disk form. The same tax rules apply to program updates as apply to the original sales of programs. If the program update is prewritten or “canned” then it would be taxable under Regulation 1502(f)(1). If the update is a custom program, prepared to the special order of the customer, then it would be considered to be a service and the charges are not subject to tax unless such services are performed under an agreement which is a mandatory part of a taxable sale of tangible personal property. (See the Public Notice dated October 1982.)

Please contact us if you have any further questions.

Very truly yours,

Richard Ochsner
Tax Counsel

RHO:jw

Enclosures (5)

bc: Out-of-State – District Administrator
Mr. Donald Hennessy