



---

**STATE BOARD OF EQUALIZATION**

March 29, 1994

SENT BY FAX & REGULAR MAIL

Re:

This is in reply to your March 15, 1994 letter regarding the application of sales or use tax to a charge by --- for software delivered to a customer in California. You provided the following facts:

--- (hereinafter ---headquarters in --- develops and sells clinical medical software. --- (hereinafter --- headquartered in --- California, is the owner of multiple clinical laboratories located throughout the country.

"On June 29, 1990, --- entered into a computer license agreement with --- whereby --- acquired the right to use certain computer software at ten of its clinical reference laboratory sites. The sales agreement tentatively identified eight of the ten sites. However, --- retained the right to substitute equivalent size facilities for any site. The agreement also tentatively identified --- (hereinafter --- a Texas laboratory, as being the first laboratory site to be installed. The sales agreement permits --- to make copies of the software to fulfill the ten site requirement, eliminating the need for --- ship more than one copy of the tape containing the software.

"The agreement did not specify a purchase price for each site. The agreement merely lists all of the software licensed for the ten sites and indicates a total price of \$2,500,000. Terms for the payment of the purchase price link payment to the earlier of the conversion of various sites or specified dates. Full payment was due by December 15, 1992, or after the conversion of the seventh site.

"On June 20 and July 6 of 1990, --- shipped tapes containing the licensed software to --- at ---headquarters. The software was shipped prior to the contract signing due to the short time frame contemplated for the ten-site installation.

--- employees created an appropriate VMS environment on computer hardware located at the California headquarters and installed the licensed software. Since the software was the first release of a new version, --- employees tested the software to insure that it was functioning correctly. Work related to documentation of the system and formatting the database was also performed in California.

"In August 1990, a copy of the software and database was transferred to the Texas site where it was installed and the database completed. --- personnel were responsible for the installation of the software and traveled from California to Texas to perform the installation. --- provided assistance in the installation process where necessary.

"Although the software media was delivered in June and July of 1990, the first invoice was not issued until November 1990. When the site became operational, --- invoiced --- \$400,000 for the first installment based on the agreement, charging California sales tax on the invoice.

"It should be noted that the --- headquarters was a licensed site and that the software has remained installed at that location since the date of the original installation in July 1990.

"It should further be noted that the license agreement is for ten sites of ---- choosing at anyone time and is not site-specific. --- has the right to transfer software from an existing site to a new site at its discretion. In fact, the --- site was closed in 1993 and another laboratory site substituted."

We assume that --- shipped the software to --- from outside this state.

California imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. (Rev. & Tax Code section 6201.) Under the facts you present, -- purchased tangible personal property from a retailer for use in this state. When --- installed the software in its computer in California, it made a use of the software in this state. Although it is not clear from your letters, I understand from our telephone conversation that, not only did the sales agreement permit --- to make the copy of the software in this state, --- did, in fact, make the copies in this state, rather than --- shipping copies to other sites from its out-of-state location. Under these circumstances, California use tax applied to --- use of the software in this state measured by the total sales price of \$2,500,000. As a retailer engaged in business in this state pursuant to Revenue and Taxation Code section 6203, --- was required to collect the use tax from --- and provide -- a receipt as provided in Sales and Use Tax Regulation 1686, Receipts for Tax Paid to Retailers.

Very truly yours,

Ronald L. Dick  
Staff Counsel

RLD:plh

bc: Santa Ana District Administrator - EA  
Out-of-State District Administrator - OH