



STATE BOARD OF EQUALIZATION

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February 23, 1995

Ms. J--- L. P---
Senior Manager

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--- ---, CA XXXXX

Dear Ms. P---:

This is in reply to your October 31, 1994 letter regarding the application of sales and use tax to the following transaction you describe:

“Company X produces floppy disks that contain ‘database information’ supplied by Company Y. Company Y purchases these diskettes tax paid and subsequently licenses them to customers in substantially the same form as acquired from Company X. The license agreement provides that Company Y owns all rights, title, and interest in the database information contained on the diskettes. The agreement further provides that the diskette must be returned to Company Y if the customer chooses not to renew the license agreement. The license agreement does not provide the customer with an option to purchase the diskette.”

Given this information, you conclude the transfer of diskettes by Company Y to its customers is a lease and not subject to tax.

In this regard, Sales and Use Tax Regulation 1660 provides at subdivision (c)(2):

“PROPERTY LEASED IN FORM ACQUIRED. No sales or use tax is due with respect to the rentals charged for tangible personal property leased in substantially the same form as acquired by the lessor, or by his or her transferor, as to which the lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price. If such tax has not been so paid, and the lessor desires to pay tax measured by the purchase price, it must be reported and paid timely with the return of the lessor for the period during which the property is first placed in rental service. A timely return is a return filed within the time prescribed by Section 6452 or 6455 of the Revenue and Taxation Code, whichever is applicable.”

We assume the transfer of diskettes by Company Y to its customers is for a fixed term and the customers are required to return the disks at the end of that term. If Company Y purchases the diskettes containing the database information from Company X and either pays sales tax reimbursement or timely reports and pays use tax on the transaction, and leases the diskettes to Company Y’s customers in substantially the same form as it acquires the diskettes, no use tax is due with respect to the rentals Company Y charges its customers.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Staff Counsel

RLD:sr