

Memorandum**395.1057**

To: Mr. Jack E. Warner
District Principal Auditor

Date: March 19, 1990

From: David H. Levine
Tax Counsel

Subject: I. R. D--- Corp. L--- P---.
SU -- XX-XXXXXX

This is in response to your memorandum dated January 24, 1990 regarding the application of sales tax to a sale of a cable TV company's assets. During the audit period, the company had made sale of about 11 decoder boxes in a total amount of \$4,295 to individuals who owned their own satellite dishes. You describe the other relevant facts as follows:

"1. The taxpayer purchased converters and parental locks tax paid at source or timely reported on returns. No separate charge was made on their cable subscriber billings.

"2. A separate charge was made to cable subscribers for a TV Guide. The TV Guide is an exempt periodical under Section 6362.

"3. No sales or leases of tangible personal property, other than those described above, were made."

You ask whether the sales of decoder boxes were sufficiently related to the company's primary activity of providing cable service so that the sale of the company's assets would be subject to sales tax.

As set forth in subdivision (a)(5)(A)1. of Regulation 1595, when assets are sold of a service enterprise which also makes some incidental sales, sales tax applies only to the gross receipts from the sale of the tangible personal property held or used in the selling activity. On the other hand, under subdivision (a)(5)(B)2. of Regulation 1595, where a service enterprise and a sales business are operated together so as to constitute one business, tax applies to all gross receipts from the sale of the assets of that business. We regard cable television systems as

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service enterprises. We believe that taxpayer's sales of decoder boxes were separate from its service activities, in effect, a separate business. Therefore, based on the facts presented in your memorandum and the letter from taxpayer dated January 18, 1990, we conclude that tax applies only to the gross receipts from the sale of the tangible personal property held or used in its activity of selling decoder boxes.

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David H. Levine