

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-3723

October 19, 1990

Dear Mr. ---:

This is in response to your letter of October 11, 1990.

We understand that X is entering into an agreement to purchase the assets used by Y in the AA --business. Y has a seller's permit. Section 1.1 of the Asset Purchase Agreement, dated as of October 12, 1990, provides for the purchase of the following assets:

- (a) All notes and accounts receivable of the Business as of the Time of Closing in connection with sales arising out of the Business prior to the Time of Closing ("Accounts Receivable") with recourse to the seller.
- (b) Marketing materials, training materials, office and reference materials and similar items associated with the Business;
- (c) All franchises, licenses, permits consents and certificates of any regulatory, administrative or other governmental agency or body issued to or held by Seller necessary or incidental to the conduct of the Business (the "Permits"), (to the extent the same are transferable), a description of all such franchises, licenses, permits, consents and certificates being included in Schedule 1.1(c).
- (d) All inventions, trade secrets, formulae, process engineering, technical data, art works, schematic drawings, secret processes, engineering drawings, proprietary rights, proprietary knowledge, know-how, computer software and programming know-how (including source code, object code, on-line files, documentation, testing materials, reports, etc.), names, symbols, service marks, logos, copyrights, and patents and all applications therefore, registrations thereof and licenses in respect thereof necessary to or used in the conduct of the Business, including without limitation, all rights in and to the names "XY" and further including, without

limitation those items listed but not extensively or revealingly described on Schedule 1.1.(d) (the "Technology"). Without limiting the generality of the foregoing, Technology shall include all software owned or licensed by Seller and used in both its AA -- business and its BB -- business (the "BB Software"). Notwithstanding the foregoing, the Technology shall not include: (i) the current and future hardware accelerator families of the Seller, including without limitation, the B family, C family, D and E family, F family and G family, and (ii) products of technologies developed by X that are not integral to the Business (collectively, the "Excluded Technology").

(e) The contracts, agreements, contract rights, license agreements, purchase and sales orders, quotations and other executory commitments of Seller, entered into in connection with the conduct of the Business (the "Contracts") listed on Schedule 1.1(e) (the "Contracts"). All other contracts, agreements, contract rights, license agreements, purchase and sales orders, quotations and other executory commitments of Seller entered into in connection with the Business (the "Excluded Contracts") are listed on Schedule 1.1(e) as well under the heading "Excluded Contracts."

(f) All lease and rent deposits and prepaid expenses relating to the Business, as described in Schedule 1.1(f).

(g) All books of account, customer and supplier lists including addresses, files, papers and records relating to the Business.

(h) All inventory relating to the Business, as is in existence at the Time of Closing (the "Inventory").

(i) All causes of action, judgments and claims or demands of whatever kind or description arising out of or relating to the Business.

(j) All goodwill, if any, associated with the Business.

A separate agreement is under negotiation whereby X will properly purchase workstations and other tangible personal property used by Y in a transaction subject to California sales tax.

The purchase price for the assets consists of cash sales of common stock of X and royalty payments based on net sales. At this juncture, the Asset Purchase Agreement provides for allocation of the purchase price between (1) the specific assets, identified in paragraphs (a) through

(i), and (2) goodwill. It is our understanding that the parties will further negotiate a selling price with respect to certain specific assets, described below.

The principal asset being acquired under the Asset Purchase Agreement is the AA -- technology reduced to practice in software source code. It is contemplated that this software will be transferred by electronic transmission in accordance with the program described in Appendix B of the Agreement.

As we discussed by telephone on October 19, 1990, sales tax does not apply to items in paragraphs (a), (c), (e), (f), (g), (h), (i) and (j).

The marketing materials described in paragraph (b) will be consumed by the transferee for sales and use tax purposes. Accordingly, sales tax applies on the sale of these items. Tax-paid purchases resold deduction would be available to the extent tax may have been paid upon the acquisition of these items, because we understand that no taxable use was made of these items by the transferor.

With respect to assets listed in paragraph (d), our analysis is as follows. Sales tax does not apply where prewritten programs are transferred by remote telecommunications. Tax does not apply to written documentation and manuals transferred in conjunction with the transfer of the programs, since no separate charge is made for the transfer of these items. Regulation 1502(f)(1)(D).

Sales tax applies to the sale of drawings, designs, engineering and technical data, artwork, schematic drawings and engineering drawings, as described in paragraph (d). Business Taxes Law Guide Annotation 540.0240 provides, in relevant part, as follows:

“Designs, drawings, customer lists, patents and goodwill of an out-of-state corporation were purchased by an in-state purchaser. Since the designs and drawings are tangible personal property, they are subject to use tax measured by the portion of the purchase price reasonably attributed thereto....”

We understand that the parties intend to agree that the price with respect to these items will be approximately 180 percent of the cost of physical reproduction of these items. We are in agreement that the measure of tax is properly the price which will be agreed to by seller and buyer.

We understand that the parties intend to close this transaction as soon as possible and that the parties desire to make the electronic transfer of the programs during the weekend of October 20-21, 1990. Accordingly, we are providing you with a facsimile transmission of this letter, and we are mailing the original today.

Very truly yours,

Mr. ---

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October 19, 1990
395.1251

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

Transmitted by facsimile October 19, 1990