

STATE BOARD OF EQUALIZATION
(916) 445-5550

December 2, 1991

Mr. [REDACTED]
Certified Public Accountant
[REDACTED]

Dear Mr. [REDACTED]

This is in response to your letter dated October 28, 1991 regarding the application of sales or use tax to the sale of computes and software. Initially, I note that under Revenue and Taxation Code Section 6596, the Board may relieve a person of tax liability for taxes properly due only when that person relies to his or her detriment on a written opinion from the Board which is in response to a written inquiry that discloses all facts about the transaction in question, including the identity of the taxpayer. Since you have not identified your client, the opinion below is not one that comes within the provisions of section 6596.

Your client was hired to review a customer's office situation, recommend a computer network, and provide and install that computer network. Your client charged tax (reimbursement) on the network and all of the tangible personal property but did not charge tax on the handling charges. Your client also did not charge tax reimbursement on the consulting or on the installation and configuration. You note that your client charges for consulting at an hourly rate and does not require the customer to purchase any product or additional services.

When your client provides consultation and the contract provides for no transfer of tangible personal property to the customer, then your client's charge is not subject to sales or use tax. On the other hand, when the consultation is part of the sale of tangible personal property, the charge for that consultation is subject to tax. You have not provided us with a copy of the relevant contract. However, it appears that your client contracted to sell tangible personal property to its customer. As part of that contract, your client provided preliminary consultation and recommendations regarding which computer network to acquire. This would be a contract for the sale of the tangible personal property, and the consultation would be regarded as part of that sale. As the retailer of the tangible

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personal property, your client owe sales tax on its gross receipts from that sale, which include all amounts from the sale except those specifically excluded from the definition of gross receipts under Revenue and Taxation Code section 6012. As relevant here, that section excludes from the definition of taxable gross receipts the price receive for labor or services used in installing the property sold. Thus, your client's charges for installation are not subject to sales or use tax. All other charges would be subject to tax. Specifically, I note that charges for handling which relate to the taxable sale of tangible personal property are always included in the measure of tax.

You note that your client also provides custom programming. Revenue and Taxation Code section 6010.9 excludes from the definition of "sale" and "purchase" the transfer of a program qualifying as a custom computer program. Custom computer programming is defined in subdivision (b) of Regulation 1502, a copy of which is enclosed. Application of tax is explained in subdivision (f)(1)(2) of Regulation 1502.

In the invoice you have included which is dated June 13, 1990, charges are itemized for tape cartridges, sales tax, shipping, and handling. Subdivision (c)(7) of section 6012 provides that certain charges for transportation are excluded from the measure of tax. This is explained in Regulation 1628, a copy of which is enclosed. Assuming that the tape cartridges were shipped by other than facilities of your client and assuming that the charge for shipping is no more than the amount paid by your client to the carrier, then the charge for shipping is excludable from the measure of tax. However, as noted above, the handling charges are included in the measure of tax. These same rules apply to the shipping charges shown in the invoice dated August 10, 1990 for the sale of the computer equipment.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:es
[REDACTED]