

**STATE BOARD OF EQUALIZATION**

(916) 445-6450

December 4, 1989

REDACTED TEXT

Dear REDACTED TEXT,

This is in reply to your October 5, 1989 letter regarding the application of sales tax to charges by REDACTED TEXT. You noted the following facts:

Our company performs laser light shows for conventions, fairs, grand openings, special events, private parties, and celebrations, ie; July 4th. We furnish all equipment, technicians, and manpower for these performances. Our shows are similar to laser light services used in rock concerts. Some include animated displays on walls, screens, etc.

Our billboard displays consist of flashing logos and/or animation intermittently for a length of time, ie; hrs./min. with laser lights on walls, screens, billboards, rooftops, etc. No equipment is set up as permanent at any show site.

All shows and displays are designed for specific events as requested by our clients. At no time do we give anything tangible with our service.

When you contract to perform laser light shows by furnishing equipment together with your personnel who retain possession of the equipment and operate it, you provide a service rather than sell or lease tangible personal property. (Cf. Rev. & Tax. Code §§ 6006, 6006.3, 6010; BTLG Annot. 515.0990.) In such case, you are the consumer, not the retailer, of the tangible personal property which you use in performing the service. Your charge is not subject to sales or use tax. Tax applies to the sale to you of the equipment you use. (See Sales and Use Tax Reg. 1501, Service Enterprises Generally.)

When you set up equipment on your client's premises and leave it without an operator, your granting temporary possession of the display is a lease of the display to your client. A lease of tangible personal property is a sale under the Sales and Use Tax Law unless the lessor leases the property in substantially the same form as acquired and pay sales tax reimbursement to his or her vendor or timely pays use tax measured by purchase price. (Rev. & Tax. Code §§ 6006(g).) If your lease is a sale under this definition, you must collect use tax from your lessee, measured by rentals payable, and pay it to this state. (Rev. & Tax. Code §§ 6201, 6202, 6203.) If your lease is not a sale, no sales or use tax applies to the lease; that is, if you lease the equipment in

substantially the same form as acquired, and you pay sales tax reimbursement to your vendor or timely pay use tax measured by the purchase price, tax does not apply to your lease receipts. We will assume that you always lease the property in substantially the same form as acquired.

If you purchase equipment to use (i.e., by your operator as opposed to your leasing it to another), you may not issue a resale certificate. If you had not paid sales tax reimbursement or use tax to your vendor, you must timely pay use tax to the state measured by purchase price. If on the other hand, you purchase equipment to lease and did not pay tax on the purchase (e.g., you issued a resale certificate or you purchased the equipment from an out-of-state vendor not engaged in business in California), all leases of that property would be subject to use tax measured by rentals payable. If you thereafter use that equipment (e.g., your operator operates it), you would owe use tax measured by purchase price less a credit for taxes previously paid on rentals. When that equipment is thereafter leased, those leases are subject to tax less a credit for the tax paid measured by purchase price. This is explained in subdivision (c)(6) of Regulation 1660, a copy of which is included in the pamphlet enclosed for your information, Tax Tips for Leasing Tangible Personal Property.

As indicated in the previous paragraph, if your leases are sales and you also use the property yourself, your tax responsibilities become more complicated. To avoid this, we recommend that you pay sales tax reimbursement to your vendor or timely pay use tax measured by purchase price for equipment that you will use as well as lease, so that your leases will not be sales under the Sales and Use Tax Law.

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

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

Enc.

bc: Sacramento District Administrator