

M e m o r a n d u m**120.2635**

To: San Francisco – Auditing (RC:FJN)

May 18, 19847

From: Charles Graziano

Subject: Microfiche Copies at D--- Corporation
SR -- XX XXXXXX

This is in reply to your memorandum dated April 9, 1984, regarding D--- Corporation (D---), a wholly-owned subsidiary of --- --- --- Corporation. You ask our opinion as to the correct application of tax to charges made for microfiche copies under the following circumstances.

We understand that D--- is a data processing service bureau which provides processing services to banks in California. Since 1980, D--- has provided its customers reports in microfiche form. The customers furnish D--- with information on various transactions and the information is computer processed by D--- to produce a magnetic tape. The tape is further processed through the Datagraphic Autocomm to develop a negative which is called the “master copy.” D--- then makes one or more microfiche copies from this master copy by the use of a microfiche copier. The master negative is retained by D--- from one to six months, after which time, the customer has the option to receive it at no extra charge or it is disposed of by D---. D--- may also prepare paper copies from the microfiche reports. D--- bills its customers the following charges for these “services”: a processing charge, a \$1.50 charge for the preparation of the master negative, a \$0.25 charge for each microfiche copy, and a \$0.20 charge for each paper copy made from the microfiche report.

Sales and Use Tax Regulation 1502(d)(4) provides, in pertinent part, that tax applies to charges for microfilming or photorecording except, as provided under subsection (d)(5) of this regulation, when the microfilming or photorecording is done under a contract for the processing of customer-furnished information.

Subsection (d)(5) of Regulation 1502 provides that where a service bureau enters into a contract for the processing of customer-furnished information by the use of a computer program, and the output is in part or in whole transferred to the customer in tabulated listing or similar

human readable form, the true object of the contract is considered to be the rendition of a nontaxable service. Subsection (d)(5) further provides that under this type of contract, tax will not apply even though the computer output media may be microfilm or photorecording paper instead of a tabulated listing, or whether the microfilm or photorecording is done on-line or off-line.

Therefore, tax does not apply to the charges made by a service bureau for the processing of customer-furnished information where the customer receives the report in microfiche form. Tax does apply, however, to charges for any additional copies of the microfiche report.

Thus, with regard to D---s' data processing service charges, tax does not apply to the charges made for the data processing, as well as for the production of both the master negative, and the first microfiche copy which is made from the master negative and transferred to the customer. In our view, these charges are for the rendition of a nontaxable service. However, the charge for any additional copies of the microfiche furnished to the customer is subject to tax, regardless of whether the copy is in microfiche or paper form.

CJG:ba

bc: Mr. D. J. Hennessy
Mr. John Abbott