

**STATE BOARD OF EQUALIZATION**

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March 2, 1987

Mr. J--- S---
H--- A---, Ltd.
Computer Division
XXX --- Avenue, Suite XXX
--- ---, CA XXXXX-XXXX

SR --- XX-XXXXXX

Dear Mr. S---:

This is in reply to your September 30, 1986 letter regarding the application of sales tax to sales of equipment by H--- A---, Ltd. (H---). You provided the following facts:

“As of 10/1/86 H--- A---, Ltd. Has discontinued operations at our Customer Support Center at XXXX --- Drive, --- ---, CA. We will sell our equipment located there for salvage value to H--- Computer Products (A---), Inc. as of the same date.

“H--- A---, Ltd. maintains a seller’s permit number SR --- XX XXXXXX for our location at XXX --- Avenue, --- ---, California for our computer sales operation. The --- --- facility, although owned by us, has never maintained a seller’s permit, since the activity in which they were engaged -- providing warranty maintenance service for disk drives -- is a non-taxable activity.”

You believe that, under Sales and Use Tax Regulation 1595, Occasional Sales -- Sale of a Business -- Business Reorganization, the sale of equipment that H--- used at the Customer Support Center is not subject to sales tax.

The California sales tax is generally imposed on retailers for the privilege of making retail sales unless the sale is specifically exempt. (Rev. & Tax. Code § 6051.) One such exemption is for “occasional sales” (Rev. & Tax. Code § 6367) which term is defined as including, “a sale of property not held or used by a seller in the course of activities for which he or she is required to hold a seller’s permit or permits....” (Rev. & Tax Code § 6006.5, subd. (a).)

The issue here is whether H--- held the assets at the Customer Support Center in the course of activities for which H--- is required to hold a seller’s permit. When a person sells assets of a

business which the person operates separate from a business which is required to hold the seller's permit, the sale of such assets is not subject to tax. In this regard, Regulation 1595 provides at subdivision (a)(3), Separate Businesses:

“A person engaged in an activity or activities requiring the holding of a seller's permit or permits may also be engaged in entirely separate endeavors which do not require the holding of a seller's permit or permits. Tax applies to the sale of tangible personal property held or used in the course of an activity requiring the holding of a seller's permit. Tax does not apply to the sale of property held or used by the seller in the non-selling endeavors which do not require the holding of a seller's permit. For example, a person may own a hardware store at one location and a real estate brokerage business at another location, with no relationship between the two activities except that of common ownership. Under these circumstances, a sale of furniture used in the brokerage business would not be a sale of property held or used in an activity requiring the holding of a seller's permit. A sale of tangible personal property used in the hardware business would be a sale of property held or used in an activity requiring the holding of a seller's permit.”

When a service enterprise and a sales business are operated together so as to constitute one business, tax applies to the sales of the assets of the business. (Reg. 1595(a)(5)(B)(2).) You noted that the activities H--- conducted at the Customer Support Center were the warranty maintenance service for tangible personal property (disk drives) which we assume was sold by H---. You also noted that H--- accounts for the activities at the sales location and the Customer Support Center on a consolidated basis. Given such facts, notwithstanding that H--- maintained the Customer Support Center at a separate location from the sales location and did not hold a seller's permit for the Customer Service Center, we believe that the Customer Service Center was not an entirely separate endeavor from the course of activities for which H--- holds its seller's permit. Rather, H--- held the assets in one unified business for which H--- is required to hold a seller's permit. The sale of such assets is not an “occasional sale,” and sales tax applies to the sale.

We hope this answers your question; however, If you need further clarification, feel free to write again.

Very truly yours,

R. L. Dick
Tax Counsel

RLD:sr