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February 18, 1993

CINDY RAMBO
Executive Director

Mr. REDACTED TEXT 1

Re: SZ GH REDACTED TEXT 2

Dear Mr. REDACTED TEXT 1:

This is in reply to your February 9, 1993 letter regarding the application of sales tax to a procedure Company REDACTED TEXT 2 is considering to provide to its customers. You provided the following facts:

“Company REDACTED TEXT 2 is a manufacturer and seller of fault-tolerant large mainframe computer systems and fairly large minicomputer systems. We have been for some time helping our customers to re-locate their data centers. Normally this requires our customer to ‘bring down’ the system while the equipment he owns is being de-installed and re-installed at the new location. Obviously, the customers who buy fault-tolerant equipment have serious problems with their equipment being unavailable while it is move to another location. We are considering offering an option to our T-Move service to be called ‘T-Move/Swap’ that will make it possible for our customers to re-locate their data center without ‘bringing down’ the system. This service is accomplished as follows:

“REDACTED TEXT 3 owned equipment (reconditioned used equipment) is placed at the NEW location for the customer’s data processing center. This equipment is installed and placed in service. Once the system at the new location is functional and the application programs have been transferred, the customer’s equipment at [the] original location is de-installed and returned to REDACTED TEXT 3. This program may NOT be used by a customer to upgrade the equipment he owns at the old data processing center.

“The equipment swapped must be a T-16 number (the T-16 number is a part number) unit-for-unit match to equipment delivered from REDACTED TEXT 3, as well as be of equivalent condition.

“Although the equipment moved to the new data processing center is not the same equipment as the customer originally owned, it is an EXACT duplicate of the equipment. The duplication is assured by the T-16 unit for unit match. That is, each part has the same part number as the equipment originally owned by the customer.”

Given this information, you asked for our opinion as to whether the facts result in a sale subject to sales tax.

We believe the transaction results in REDACTED TEXT 3 making a retail sale of equipment to the customer with REDACTED TEXT 3 taking the customer’s equipment as a trade-in.

Revenue and Taxation Code section 6006 defines “sale” to mean and include, “any transfer of title or possession, exchange, or barter . . . in any manner or by any means whatsoever, of tangible personal property for a consideration.” That is what happens under the facts you provide where REDACTED TEXT 3 transfers title and possession of its equipment to a customer in exchange for the customer’s equipment and additional consideration.

The gross receipts of the sale include the fair market value of the computer traded in and any other consideration paid by the customer for the swap. (Sales and Use Tax Reg. 1654, subd. (b)). Charges for labor for services used in installing the equipment sold are excluded from the measure of tax. (Sales and Use Tax Reg. 1546, subd. (a)). Tax applies to REDACTED TEXT 3’s charge whether REDACTED TEXT 3 provides new or used equipment to the customer.

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

Very truly yours

Ronald L. Dick

Senior Tax Counsel

RLD:cl

bc: San Jose District Administrator