

Memorandum

330.2376

To: Mr. Glenn Bystrom

Date: May 14, 1996 and 6/15/90

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed D. F. Brady's memorandum of June 15, 1990 to --- --- ---

We are in agreement with his conclusion, as follows:

Regulation 1660

Nintendos and Segas. Leases of Nintendos and Segas and/or software were not within the exemptions for video cassettes, video tapes and video discs provided by Regulation 1660(b)(1)(A). There lease fall under the general leases of tangible personal property. If leased in the same form as acquired, tax is due on the rental receipts or the purchase price of the property as set forth under section (c)(2) of the above regulation. 6/15/90



STATE BOARD OF EQUALIZATION

*note: Nintendos etc. not same as movie rentals

June 15, 1990

Dear Mr.

This is in response to your letter of May 18, 1990, in which you ask whether audio tapes, Nintendos, Segas, and/or software are considered in the same category as "videocassettes, videotapes, and videodiscs for purposes of sales and use taxes."

As you know, Regulation 1660 (copy enclosed) has provisions for videotapes, discs, and cassettes which treat them in a different manner than other types of leased property. These provisions state that tax applies to rental receipts regardless of whether such property is acquired with tax paid on the purchase price. Therefore, there is no option available to lessors of videotapes, discs, and cassettes. Audio tapes, Nintendos, Segas, and/or software, however, do not come under these special provisions since they are not in the same category.

Leases of audio tapes, Nintendos, Segas, and/or software fall under the general provisions of leases of tangible personal property. Therefore, the lessor of such property leased in the same form as acquired has an option to pay tax on rental receipts or to pay tax on the purchase of the property. Under this option, the lessor may elect to pay tax on the purchase price when acquiring it, or to report tax on the purchase price timely with the sales and use tax return for the period in which the property is first leased. If the election is not made timely, tax is due measured by rental receipts. On the other hand, if a timely election is made to payor report tax on the purchase price, no tax is due on the subsequent rental receipts.

I hope this information is helpful. If you have any questions please let me know.

Sincerely,

Jack A. Najarian
District Administrator

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Enclosure