

**STATE BOARD OF EQUALIZATION**

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January 3, 1990

Mr. J--- F---
K---'s Service Corporation
P. O. Box XXX
---, CA XXXXX-XXXX

SR -- XX-XXXXXX

Dear Mr. F---:

This is in reply to your September 1, 1989 letter regarding the application of sales tax to your charges to customers for the use of personal computers in your stores and for your providing word processing services.

You explained that you rent personal computers to the public for use within your stores at \$10 each hour. Either you or the customers provide the software. You also provide a laser printer to produce a finished copy at an additional price for each print. You noted that you understand that your sales of the laser print copies are subject to tax; however, you asked for the application of tax to charges for the rental of the computer equipment.

Generally, 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 pays sales tax reimbursement to the vendor or timely pays use tax measured by the purchase price. (Rev. & Tax. Code § 6006, subd. (g).) If the lease is a sale, the lessor must collect use tax from the lessee, measured by the rentals payable and pay the tax to this state. (Rev. & Tax. Code §§ 6201, 6202m 6203.) If the lease is not a sale, no sales or use tax applies to the lease; that is, if the lessor leases the equipment in substantially the same form as acquired, and has paid sales tax reimbursement to the vendor or timely paid use tax measured by the purchase price, tax does not apply to the lease receipts.

Revenue and Taxation Code section 6006.3 defines "lease" to include rental, hire, and license, but excludes, "a use of tangible personal property for a period of less than one day for a charge of less than twenty dollars (\$20) when the privilege to use the property is restricted to use thereof on the premises or at a business location of the grantor of the privilege." Therefore, when you allow a person to use a personal computer for a period of less than one day for a charge of less than \$20 and restrict the use to your premises, you do not lease the personal computer for purposes of the Sales and Use Tax Law; rather, you make a "use" of the personal computer. See Revenue and Taxation Code section 6009. The application of tax to such charges

is provided at Sales and Use Tax Regulation 1660, Leases of Tangible Personal Property – In General, at subdivision (e)(4):

“ The grantor of the privilege to use property under [such] conditions...is the consumer of the property. Accordingly, charges by him for the privilege to use the property are not subject to tax. Tax applies to the sale of the property to him by a retailer or to his use of the property, measured by his purchase price, when the property is purchased from a retailer in California under a resale certificate or from a retailer at an out-of-state location. If the property is acquired through an ‘occasional sale’ as defined in Section 6006.5, or other exempt transaction, no tax applies to the acquisition or use of the property by the grantor nor to his charges for the privilege to use the property.”

Of course, there may be times when you rent the computers for a charge in excess of \$20. In those cases, your transaction with the customer is a lease of the equipment. Since you will be both using and leasing the equipment, the application of tax is complicated. See subdivision (c)(6) of the enclosed copy of Regulation 1660. We therefore suggest that you purchase the property tax paid and avoid paying tax on lease receipts.

You also noted that you provide word processing services to produce finished copy from a customer’s manuscript, using a personal computer and a laser printer. You may produce resumes, menus, letterhead, brochures, etc. You asked whether your charge is nontaxable as a charge for a secretarial service or taxable as a charge for data processing.

We are enclosing a copy of Sales and Use Tax Regulation 1502.1, Word Processing, which provides the application of tax to the charges you describe. Generally, tax does not apply to your charges for furnishing original letters or documents or carbon copies produced simultaneously with the original. However, tax does apply to your charges for producing multiple copies of letters, manuscripts, or other documents using the word processing equipment. We suggest that you review the regulation and, if you need further explanation of the application of tax to your word processing charges, send a description of the work you perform. We will then be able to provide you with an opinion as to the application of tax. Also, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr