

**STATE BOARD OF EQUALIZATION**

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November 15, 1990

Mr. D--- E. W---
S--- & Company
Certified Public Accountants
XXXX West --- Street
P.O. Box XXX
---, California XXXXX

Dear Mr. W---:

Your letter dated October 1, 1990 has been referred to us for response. Your client constructs and leases security alarm systems. You ask how sales tax applies to its charges. You describe the transaction as follows:

“(1) A proposal is prepared showing the equipment to be installed. The estimated cost of the equipment as well as the labor charge is quoted. An estimated monthly lease fee is also quoted. As you can see on page one of the enclosures, this proposal shows a quote of \$230.00 as the initial charge for the equipment and installation labor and a quote for the monthly lease of \$14.50.

“(2) When the proposal is accepted, a billing is issued after installation is completed. The second page of the enclosures is an actual billing for the above proposal. The equipment charge was \$206.04 upon which sales tax was charged of \$12.87. The labor charge was \$11.09 for a total balance due of \$230.00.

“(3) Finally, a quarterly billing for the alarm lease is sent. The third enclosure is a copy of such a billing. Sales tax is not charged on this amount.

“(4) The customer may also desire to have the system monitored. This is billed separately as is shown by the fourth enclosure. Again, sales tax is not charged.”

In a letter dated July 31, 1990, you state that the alarm system is assembled and installed at the lessor's site. It is not clear what you mean by being installed at the lessor's site. Nevertheless, I assume that you do not lease the system in substantially the same form as you acquire it. You also state that the lessee may terminate the lease at any time. If it does so, the alarm system is removed from the lessee's premises.

We have previously considered application of tax to a person providing burglar alarm services. Business Taxes Law Guide Annotation 330.1920 (5/26/66) does not appear to apply to your specific facts, but I quote it below for your general information:

“Contracts for the installation and service of burglar alarms may be regarded as service agreements rather than leases of tangible personal property in those cases in which: the value of the equipment on the customer’s premises is low in comparison to the total charge; the installation of the burglar alarm company does not constitute substantial fabrication labor; the company has the right to change or alter the equipment as it deems necessary to provide proper alarms; and the company goes to the customer’s premises after each alarm. The burglar alarm company will be regarded as the consumer of all property it uses or installs under those contracts.”

A company providing burglar alarm services in the manner discussed in this annotation would not be regarded as leasing the system, but would be regarded as providing service and consuming the property it uses to provide that service. That would mean that it would pay sales tax reimbursement to its vendor or pay use tax measured by its purchase price of the subject equipment. Your client does not provide burglar alarm services as discussed in the annotation. As mentioned above, your client apparently does not lease the property in substantially the same form as acquired, that is, your client apparently performs substantial fabrication labor setting up the system. It is not clear whether your client has the right to change or alter the equipment as it deems necessary. Your client apparently does not go to the customer’s premises after each alarm, at least not for the usual alarm contract.

A lease of tangible personal property is a sale and is subject to use tax measured by rentals payable unless the lessor leases the property in substantially the same form as acquired and pays sales tax reimbursement or use tax measured by purchase price. (Rev. & Tax. Code §§ 6006(g)(5), 6010(3)(5).) Since your client apparently does not lease the property in substantially the same form as acquired or pay tax measured by purchase price, its leases are sales and are subject to use tax measured by rentals payable. You ask the amount of the rentals payable.

The taxable rentals payable do not include the charge for installing the system. (Rev. & Tax. Code §§ 6011(c)(3), 6012(c)(3).) However, it is not clear whether your client’s charge for installation also includes the cost of fabrication. A charge for fabrication is included in the measure of taxable rentals payable (BTLG Annot. 330.3320 (4/16/70)), as are all other payments required by the lease. (Reg. 1660(c)(1).)

As stated in your July 31, 1990 letter, the monthly charge is a charge for the lease of the alarm system. When the lessee ceases paying that monthly charge, the lease terminates and the property is removed. We conclude that this monthly charge is a charge for lease of the system and is part of your client’s taxable rentals payable. On the other hand, we understand that monitoring the system is optional and not required in order to lease the system. As an optional charge for

additional service, we conclude that this charge is not required by the lease and is not part of your client's taxable rentals payable.

In summary, all of your client's charges are subject to use tax which you client must collect from the lessee and pay to the state except charges for installation and charges for optional monitoring. If you have further questions, feel free to write again.

Very truly yours,

David H. Levine
Senior Tax Counsel

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