

**M e m o r a n d u m****330.2843**

To: Out-of-State – Auditing

Date: October 29, 1982

From: Tax Counsel (LS) - Headquarters

Subject: B--- S--- T--- Division  
B--- I--- Corporation

SY -- XX-XXXXXX

This is in response to your memorandum of September 14, 1982. In our February 4, 1982 correspondence regarding this taxpayer, it was pointed out that a distinction should be drawn between those instances where transportation charges were made solely for a serviceman's visit to the customer's site and similar charges where the serviceman was delivering tools pursuant to a lease agreement. In the prior correspondence, it was assumed that these charges were not a mandatory condition of the leases, i.e., the customers could lease the tools without taking the service.

In your September 14 memorandum, it was indicated that our assumption regarding the service and delivery calls was incorrect and that such calls are a mandatory condition to leasing the taxpayer's tools.

Under these circumstances, we view all charges for delivery and/or service to be taxable as services which are part of the sale (Rev. & Tax. Code §§ 6011(a)(2), 6012(a)(2); BTLG annos. 295.1680, 1690). The separate stating on the invoice of a round trip mileage charge, in those cases where tools are delivered, does not qualify those charges for exclusion from the taxable measure as separately stated transportation charges. In order to qualify for exclusion, the charge for transporting the goods from the lessor's place of business directly to the customer's site must be identified separately on the invoice (Rev. & Tax. Code §§ 6011(c)(7), 6012(c)(7); Reg. 1628(a)). A round trip mileage charge will not suffice since a portion of such charge is for the serviceman's return trip.

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**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-8485

January 3, 1983

P--- I---, Inc.  
O--- T-- Division  
P. O. Box XXXXX  
--- ---, Texas XXXXX

SZ -- XX-XXXXXX

Gentlemen:

The Board's Out-of-State Auditing Staff has forwarded your request for a legal opinion to our attention. We have reviewed a document entitled "General Terms and Conditions" as well as pages 18, 31, 32, 33, and 34 from a November 15, 1981 pricing document of P--- I--- Inc. O--- T--- Division (P---).

Our opinion is requested with respect to whether or not sales and use tax is due on charges made in connection with the rental of P---'s tools. Specifically, you wished to know if certain services performed in conjunction with the rentals are subject to tax.

Generally speaking, services that are part of the sale or rental of tangible personal property are subject to tax (See Rev. & Tax. Code §§ 6006, 6011(b)(1), 6012(b)(1), 6051, 6201. Such services include those which the seller or lessor must perform in order to sell or lease the property, or for which the purchaser or lessee must pay as a condition of the purchase and/or functional use of the property. Other service charges are not subject to tax.

We understand that charges for the first eight hour period or fraction thereof, for "additional periods," and the "misrun charges" include the charge for P---'s technical specialist. Clearly, under the criteria outlined above, the lessee's agreement to pay these charges are a condition precedent to the lease of the tools and, accordingly, are taxable. On the other hand, the "call back or retrieving charge", which we understand applies if the technical specialist is released by the customer and later returns at the customer's request, appears to be an exempt charge for services which is not taxable.

P--- I---, Inc.

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January 3, 1983  
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We hope this has answered your question. If it has not, or if further assistance is needed, feel free to contact us.

Very truly yours,

Les Sorensen  
Tax Counsel

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