

## Memorandum

**To** San Diego District Office (D. Jones)

**Date:** February 21, 1989

**From** Ronald L. Dick  
Tax Counsel

**Subject:** REDACTED TEXT

This is in reply to your January 11, 1989 mini-memo in which you asked whether an attached lease agreement “meets the requirements of a ‘fixed price contract’”.

The lease agreement is between REDACTED TEXT (owner) and REDACTED TEXT (user). You highlighted paragraph number two of the agreement which provides:

“User agrees to rent such display and pay for the use and maintenance thereof, the sum of \$327.00 (plus any applicable use tax) per month in advance throughout the term of 36 consecutive calendar months, commencing on the first day of March 1988.”

We believe that where, as here, a lessee has agreed to pay “any applicable use tax,” the contract is not for a fixed price. Rather, the amount of the lease receipts could be increased after the operative date of a district transactions and use tax ordinance. (See BTLG Annot. 800.0020.)

Our opinion is not altered by the contract you sent having the handwritten notation “6%” above the word “applicable” in the quoted paragraph. We believe that, in order for the lessor and lessee to avoid the increased tax rate, they should have lined out the “applicable”.

If you have any further questions regarding this, please feel free to write again.

RLD:sr