

**STATE BOARD OF EQUALIZATION**

(916) 445-6493

January 27, 1986

Mr. D--- V. O---
O--- S---
XXX --- ---, Suite XXXX
--- ---, CA XXXXX

Re: O--- S--- – SR -- XX-XXXXXX
Site licenses for prewritten computer
programs

Dear Mr. O---:

In your December 9, 1985 letter to the Board's legal section you write:

I would like a formal written ruling on two questions related to the law on sales tax.

- (1) Must my (California) customers pay sales tax on the purchase of a site license for a computer software program?
- (2) If my customers resell copies of the program to their members, must the members pay sales tax?

I'm enclosing drafts of our site license and some additional information. Here are additional comments for consideration.

In many cases, customers have already purchased (and paid sales tax on) the program. The site license simply permits them to make additional copies for their members.

Most customers will just give the program to their employees. Some may charge a small fee. I don't expect any to charge the full price for an individual program.

An individual program retails for \$65. The site license fee will be \$299. If a customer already owns the program, the fee will be reduced by the price he paid for the individual program.

Opinion

In answer to the first question you raise, our opinion is that sale tax does apply to your charges for site licenses for a computer software program. As the retailer of this program (referred to as E--- in the attachments to your letter), you are liable for the sales tax on these transactions and whether you obtain tax reimbursement from your customers for your tax liability is a matter of contract between you and your customers. Civil Code section 1656.1.

The sales tax applies to the site license fees because these fees represent additional gross receipts from the original taxable sale of your prewritten computer program. Under Revenue and Taxation Code section 6012(a), the measure of tax for the sale of tangible personal property includes the total amount of the gross receipts from the sale, regardless of when these amounts are received. In this situation, your customers could not enter into a site license agreement without first purchasing the disk on which the E--- program has been encoded. Thus, sales tax applies to the entire \$299 which you charge for both the disk on which the program is recorded and the site license fee. If a customer purchases the site license agreement for an additional \$234, then tax applies first to the sale of the program, and at a later date to the additional \$234 in gross receipts from the customer's purchase of the site license.

In answer to your second question, if your customers resell copies of the program to their members, the customers, not the members, are liable for sales tax on their sales, measured by the gross receipts which your customers receive for the sales. The reason tax applies is because your customers are not reselling the original disk upon which the E--- program has been recorded, but rather are selling disks on which duplicate copies of the program have been recorded. The tangible personal property sold in this instance are the disks, not the program instructions encoded on the disk. Since your customers are the retailers of these disks, tax applies to their gross receipts from these sales, and, as noted above, whether your customers receive tax reimbursement from their members for these sales is a matter of contract between your customers and their members.

Please feel free to contact me if you have any further questions or comments about this letter.

Very truly yours,

John Abbot
Tax Counsel

JA:hb