

Memorandum

120.0550

To : Mr. Eugene Crane
Audit Review and Refunds Unit - MIC:39

Date: May 6, 1993

From : Ronald L. Dick
Senior Tax Counsel

Subject: L--- N--- I--- S---
SC --- XX-XXXXXX

This is in reply to your February 23, 1993 mini-memo regarding a claim for refund by L--- N--- I--- S--- for charges for the licensing of software to the C--- P--- U--- Commission (CPUC).

You note that L---'s claim is based on its belief that it erroneously charged tax on an optional maintenance contract; however, L--- apparently has not provided any details or explanation of the facts or code provisions upon which it basis its claim.

Under the licensing agreement, L--- provides software to the CPUC and maintenance of that software. The maintenance appears generally to be L---'s providing to the CPUC updates and future releases of the software. The contract to provide the CPUC with the updates and future releases is a contract for the sale of tangible personal property. Charges for such a software maintenance contract are subject to sales tax regardless that the contract may be optional with the purchaser.

The issue which arises with respect to charges for optional software maintenance contracts is the application of tax to charges for telephone or on-site consultation services. If the purchaser may, at its option, contract for the consultation services for a separately stated price, in addition to the charges for the storage media, then the charges for the consultation services are nontaxable. If the purchaser does not have the option to purchase the consultation services in addition to the storage media, then the charges for the consultation services are taxable as part of the sale or lease of the storage media.

If you have further questions regarding this, feel free to write again; however, please provide an explanation of the facts surrounding the transaction and the specific charges which L--- believes is nontaxable.

Mr. Eugene Crane

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May 6, 1993

RLD:sr