

M e m o r a n d u m

120.3190

To: Mr. Glenn A. Bystrom
Deputy Director (MIC: 43)

Date: March 25, 1997

From: Sophia H. Chung
Tax Counsel

Subject: Diskettes Used to Operate Embroidery Machines

Your memorandum dated January 22, 1997, to Mr. Gary J. Jugum, Assistant Chief Counsel, has been referred to me for response. You request a legal opinion addressing the application of tax to sales of punched paper tapes and diskettes containing operating instructions for embroidery machines.

As you know, Revenue and Taxation Code section 6010.9, as interpreted by Sales and Use Tax Regulation 1502, provides that tax does not apply to the sale or lease of a custom computer program, other than a basic operational program, regardless of the form in which the program is transferred. Persons who create designs and transfer the designs in machine-readable form to operate embroidery machines are performing custom computer programming services if the designs are prepared to the special order of the customer. In other words, the preparation of punched paper tapes and diskettes used to control the operations of embroidery machines for such purposes constitutes exempt custom computer programming under Revenue and Taxation Code section 6010.9.

SHC:rz

cc: Mr. Robert Nunes (MIC: 40)