

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

January 20, 1988

Ms. C--- A. S---
Region Credit Analyst
G--- --- Corp.
XXX --- St., Suite XXX
---, CA XXXXX

Re: G--- --- Corp – SY -- XX-XXXXXX
U--- T--- – SR -- XX-XXXXXX

Dear Ms. S---:

This is in response to your letter dated November 24, 1987 regarding the application of sales tax to the sale of a telephone system.

G--- --- Corporation (G---) purchased the system from U--- t--- (U---) in December, 1986. G--- then leased the system to R--- F--- Company (R---). As I understand the facts set forth in your letter, this lease to R--- was actually a sale at its inception under the Sales and Use Tax Law.

The sales agreement between G--- and U--- showed that the lump sum billing included sales tax. The invoice, however, did not specify whether sales tax was being collected. You therefore asked that U--- reissue an invoice to G--- showing the amount of sales tax paid. U--- sent you a copy of a letter we wrote in which we concluded that U--- was a construction contractor when installing telephone systems.

You have obtained information from U--- showing that the lump sum price to G--- of \$110,633.21 was apparently allocated as follows: \$44,580.62 for costs of fixtures and materials; \$2,897.74 for sales tax; and \$63,154.85 remainder. You ask whether there is sales tax on the \$63,154.85 untaxed remainder.

There are two transactions that must be analyzed, the first of which is the sale from U--- to G---. The letter we wrote which you obtained from U--- properly advised U--- that, as a construction contractor, tax applies to the purchase price of materials and the cost price of fixtures. I assume these amounts are represented by \$44,580.62 in G---'s contract with U---. No further tax

is due on U---'s construction contract with G--- for the installation of the telephone system. In other words, the tax related to the transaction between G--- and U--- was apparently properly paid.

The next transaction to be analyzed is the one between G--- and R---. If this sale were subject to sales tax, the measure of that tax would be based on the sale price due to G--- from R---, and not the sale price from the prior sale due to U--- from G---. (Rev. & Tax. Code § 6051; see Reg. 1596(c).) However, whether sales tax applies to this sale depends on the actual facts involved in the transaction. In two telephone conversations in December, 1987, you agreed to send me a copy of the agreement between G--- and R---. Since you have not done so, I cannot ascertain the actual facts involved in the transaction.

If the agreement between G--- and R--- were a true lease under the Sales and Use Tax Law, the following rules apply. As a leased fixture attached to real property not owned by the lessor, the telephone system constitutes tangible personal property. (Rev. & Tax. Code § 6016.3.) Since G--- did not provide U--- with a resale certificate and sales tax was paid with respect to the sale of the telephone system to G---, no use tax would be due with respect to G---'s lease of the system to R---. (Rev. & Tax. Code §§ 6006(g)(5), 6010(e)(5), Regs. 1521(b)(2)(B)3, 1660(c)(2).) If G--- thereafter sold the system to R--- (such as upon exercise of an option by R---), sales tax would apply measured by the sale price. (Rev. & Tax. Code §§ 6016.3, 6051.)

If the agreement between G--- and R--- were an outright sale under the Sales and Use Tax Law, the following rules apply. It appears that the contract between R--- and G--- may have been in place prior to the installation of the system by U---, and that title to the system passed to R--- immediately upon installation. If such is the case, we would still regard the transaction as a construction contract by U--- whereby upon installation, the installed property constitutes real property. No further tax would be due.

If the facts are different than discussed above, feel free to write again. If you do so, please include a copy of the agreement between G--- and R---. Also, if the account number noted above for G--- is incorrect, please let us know.

Sincerely,

David H. Levine
Tax Counsel

DHL:ss