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January 21, 1997

Ms. A--- C---
 T---
 XXXX --- Avenue
 --- ---, CA XXXXX

Re: T---, Inc.
SR -- XX-XXXXXX

Dear Ms. C---:

This is in response to your letter dated November 25, 1996 regarding the applicability of tax to T---, Inc.'s ("T---") labor charges connected with changing a motherboard or adding memory to a computer. You state:

"We would like to determine whether we should not collect sales taxes on labor pertaining to computer upgrades. Up to now we have been collecting sales tax on labor when we upgrade a computer such as changing the motherboard from 486 to 586, or adding memory, etc...."

California imposes a sales tax on retailers, measured by gross receipts, for retail sales of tangible personal property in this state. (Rev. & Tax. Code § 6051.) "Gross receipts" mean the total amount of the sale without any deduction on account of the cost of materials used, labor or service cost, or any other expense. (Rev. & Tax. Code § 6012.)

We assume that T--- changes the motherboard of, or adds memory to, used computers that are owned by its customers. We further assume that the motherboard or additional memory merely upgrades the used computer by increasing its existing memory, and does not refit the computer for a use different from which it was originally produced. If such is the case, the charge for the motherboard or additional memory furnished to the customer is taxable. (BTLG Annot. 315.0055 (4/13/92).) Tax, however, does not apply to the charge for labor to install the motherboard or additional memory. (Id.)

If T--- installs the motherboard or additional memory into a used computer, and then makes a retail sale of the upgraded computer, our conclusion would be different. The charge for labor to install the motherboard or additional memory is a cost incurred to prepare the computer for sale, and is therefore included in gross receipts. The charge for the motherboard or additional memory is also included in gross receipts as a cost of the materials used. Accordingly, the entire charge for the used computer is taxable.

This opinion is based on the facts presented in your letter and the assumptions made above. If our assumptions are incorrect, this opinion does not apply. If such is the case and you wish an opinion applicable to the actual facts of the transaction, please write again and describe the transaction with specificity.

Very truly yours,

Charlotte Chyr
Tax Counsel

CC:cl

cc: Culver City District Administrator