


STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
 450 N STREET, SACRAMENTO, CALIFORNIA
 (PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
 TELEPHONE (916) 324-2637
 FAX (916) 323-3387

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September 18, 1997

Mr. D--- W---
 V---
 XXX --- ---
 --- ---, California XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. W---:

This is in response to your June 11, 1997 letter asking how tax applies to your company's operations.

You state:

"V--- Corporation [(hereafter "V---")] is an information research firm. We serve the financial industry with various information products and events.

"In October 1996, V--- began selling an annual license to V---S---, an internet-based database. Licensees access the database via their web browser. The database resides in a server at our premises. The annual license fee is \$15,500. Included, at no extra charge, with this license are two publications, [VP] and [VE], which, when sold separately, have a retail price for \$2495 and \$795 per year respectively and \$2995 if the two publications are sold together. These publications have not been taxed as they were exempt under regulation 1590. Also included with this license is the choice of two off-the-shelf reports which, when sold separately have a retail value of \$750 plus tax."

You ask what portion, if any, of V---'s charges for its annual license are subject to tax.

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.)¹ When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use or other consumption of that property in California. (Rev. & Tax. Code §§ 6201, 6401.)² Taxable gross receipts or sales price generally include all amounts received with respect to the sale, with no deduction for the cost of materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code §§ 6011, 6012.) Gross receipts or sales price do not include amounts from the sale of a service provided the service is not part of the sale of tangible personal property. (See Reg. 1501; copy enclosed.) The distinction between the sale of tangible personal property and the transfer of such property incidental to the providing of a service is set forth in Regulation 1501:

“The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true object of the contract; that is, is the real object sought by the buyer the service per se or the property produced by the service”

You state that V--- provides its customers with access to its internet database, two separate publications, and two separate “off-the-shelf” reports as part of its annual license fee. That is, V---’s annual license fee of \$15,500 is composed of not only charges for accessing its internet database, but also includes charges for its periodicals and off-the-shelf reports. Under these facts, we regard the annual license fee as both a contract for the providing of a service (i.e. access to V---’s internet database) and a contract for the sale of tangible personal property (i.e. [VP], [VE], and the off-the-shelf reports). As such, tax does not apply to V---’s charges solely for access to its internet database. We understand from your letter that this charge represents \$11,755 (\$15,500 - \$3745 (for periodicals and reports)). Tax does, however, apply to V---’s charges for its periodicals and reports unless an exemption otherwise exists.

1. Periodicals. Regulation 1590(b)(3) provides that tax does not apply to the sale or use of a periodical which appears at least four, but not more than 60 times per year, which is sold by subscription, and which is delivered by mail or common carrier. In pertinent part, Regulation 1590(a)(2) defines a periodical as:

¹ This tax is imposed on the retailer who may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code § 1656.1; Reg. 1700(a).)

² This tax is imposed on the person actually storing, using, or otherwise consuming the property. (Rev. & Tax. Code § 6202.) A retailer engaged in business inside this state is required to collect this tax from its customers and remit it to this Board. (Rev. & Tax. Code §§ 6202, 6203.)

“[T]hose publications which appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear some relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of articles appearing in them. [Fn. omitted.] Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. An annual report of a corporation which is substantially different in style and format from the corporation’s quarterly reports is not part of a series with the quarterly reports. The term ‘periodical’ does not include books complete in themselves, even those that are issued at stated intervals, for example, books sold by the Book-of-the-Month Club . . .; or so called ‘one-shot’ magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The term does not include catalogs, programs, score-cards, handbills, price lists, order forms or maps. Neither does it include shopping guides or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.”

Our review of [VP] and [VE] indicates that these publications meet the definition of a periodical as set forth above. We further understand that [VP] is distributed by mail 12 times a year while [VE] is distributed by mail four times a year. Under these facts, V---’s charges for these publications are exempt from tax pursuant to Regulation 1590(b)(3).

2. Off-the-shelf-Reports. Customers that purchase an annual license also receive a choice of two off-the-shelf reports prepared by your company called [V---F--- Reports]. We understand that these reports are standardized, non-custom reports generally offered for sale by your company for \$750 (for two). The [V---F---] report provided to us for review states that these reports are “a series of eight semi-annual reports, each focused on a different industry financed by venture capitalists. . .” Under these facts, we regard V--- as selling tangible personal property in the form of standardized, non-custom reports which do not qualify for the periodical exemption set forth in Regulation 1590. This means that tax applies to the gross receipts from the sale of these reports measured by the unit price of \$750 stated on your company’s order schedule for its annual license.

Mr. D--- W---

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September 18, 1997

We hope this answers your questions. If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Senior Tax Counsel

WLA:cl

cc: --- --- District Administrator (--)