



STATE BOARD OF EQUALIZATION

December 15, 1969

K--- and M---
Certified Public Accountants
Suite XXX, --- Building
XXX "--" Street
--- ---, CA XXXXX

Attention: Mr. M--- K---
Certified Public Accountant

Gentlemen:

Thank you for your supplemental letter of October 13, 1969, relating to the taxability of computerized letters.

Before replying to the above letter, I wish to advise that it has been brought to my attention that the conclusions expressed in my October 3, 1969, letter to you in answer to the question asked in your letter of June 19, 1969, are inconsistent with respect to the applicability of the provisions of ruling 7.5 to the facts involved. In order to avoid confusion, please disregard the October 3, 1969, letter.

I will restate the facts and the questions contained in your June 19 letter and supply the applicable answers.

The facts are as follows:

The company is in the personal computerized letter business producing individually addressed and personalized letters from mailing lists, which are in tape or punch card form.

It provides the complete mailing service from the printing of the letterheads and envelopes to inserting, metering and delivery to the post office.

The company uses outside services for practically all the segments that make up the complete computerized letter mailing. It pays sales tax on the original purchase of envelopes, paper stock, and on those portions of the mailing service that are determined by the mailing house used to be taxable. Sales tax is not being paid on computer time furnished by the service bureau. The computer is used to type in the name and address as well as typing the body or text of each letter.

The text of the letters vary as the name of the addressee may be inserted in different parts of the letter. Also, certain phrases and/or paragraphs of the letter will vary depending on the program being used for such things as the addressee's job classification, geographical area, etc.

The company is now involved in substantial out-of-state mailings. These mailings are not being delivered to a local post office in California, but rather, are being shipped by common carrier to different post offices in the other states for mailing from that location.

The invoicing to the customer for the computerized letter service and the mailing is, in many cases, an all inclusive billing simply showing the number of letters mailed and the unit price per letter, which in most cases, does include the postage paid.

Based on the above facts, you request a ruling as to the applicability of the California sales tax laws on the following points:

1. Is the procedure being used currently of paying sales tax upon the company's purchases of paper, envelopes, supplies, and taxable services provided to it, the correct procedure to be used?

It is our opinion that the procedure being used is incorrect.

The company's activities include the furnishing of tangible personal property in the form of the envelopes and printed computerized letters to its clients. Accordingly, company is the retailer of the tangible personal property so furnished and the tax applies to the charges to its customers for the property.

The provisions of ruling 7.5 do not apply to such activities, but apply specifically to so-called "mailing house transactions." The first paragraph of ruling 7.5 is phrased in general terms and characterizes a person engaged in the business of providing mailing services as a consumer of tangible personal property he uses in performing his service. This paragraph, however, must be read in light of the narrow area to which it relates, i.e., mailing services. The ruling applies generally to those engaged in that business without the additional features of selling printed or other materials to be included in the mailing.

Since company must be considered the retailer of the tangible personal property, it should purchase the envelopes, paperstock and taxable services for resale. Those purchases upon which company has paid sales tax may be claimed as a deduction under tax-paid purchases resold.

The charges made for postage, or for addressing, enclosing, sealing, preparing for mailing or mailing letters are exempt from tax provided such charges are separately stated on the invoices and in the accounting records prepared by company. These generally are the typical charges made by the mailing service.

2. If the procedure is correct as stated in No. 1 above, is it correct that sales tax does not apply to the computer time involved in programming and proceduring the computerized letters?

We believe that the tax does apply to the charges for the computer time involved in the programming and proceduring of the computerized letters.

The service bureau is, in our opinion, performing a taxable service in printing the letters. The true object of the contract between company and the service bureau appears to be the completed letters, and not the nontaxable service of furnishing new information obtained by the processing of data supplied by company. The letters are not merely for the presentation of the information obtained through the processing of source data, but are duplications of a form letter with minor modification. It is the letters which are contracted for and not simply the information contained thereon. We see very little difference between the letters produced by the service bureau and those produced by an ordinary printing house to which the tax applies under ruling 24, copy enclosed.

Administratively, we previously have ruled that the process of duplicating form letters should be regarded for sales tax purposes as similar to mimeographing or multigraphing and the tax accordingly is applicable to charges for the furnishing of the letters thus duplicated We think that where letters are produced by "mass production" methods as by mimeographing, multigraphing, or some other method of duplication, the process is simply another form of printing and the charges, therefore, taxable (Cal. Tax. Serv. Anno. No. 1682.70).

The charges for programming and processing the computerized letters constitute charges for services in connection with the furnishing of the taxable printing and are taxable.

However, since company is the retailer and not the consumer of the letters printed by the service bureau, they may be purchased for resale by issuing an appropriate resale certificate to the service bureau. Tax applies to the sale of the letters by company to its customers. The invoice to company's customers should separately state the nontaxable mailing service charge.

3. Can a tax credit be taken in some way when the completed package of computerized letters are forwarded to another state for mailing purposes?

Ruling 55(a)(1)(C) provides that sales tax does not apply to sales of property which is shipped to a point outside this state, pursuant to the contract of sale, by delivery by the retailer to such point by means of 1. Facilities operated by the retailer, 2. Delivery by the retailer to a carrier for shipment to a consignee at such point, or 3. Delivery by the retailer to a customs broker or forwarding agent for shipment outside this state.

A mailing agency may be forwarding agent as that term is used in ruling 55(a)(1)(C). Thus if the seller [company] acting under his contract with the buyer [customers of company] delivers property to a mailing agency for shipment to an out-of-state point, the sale is an exempt interstate sale. (Anno. 1516.67, Cal. Tax Service.)

Accordingly, if company is obligated by the terms of its contract with its customers to ship the letters out of state and contracts with the mailing service for such shipment out of state, the charges to its customers for such letters shipped out of state are exempt sales in interstate commerce.

Your supplemental letter of October 13, 1969, requests additional information with regard to the application of sales tax to the computer letter business.

That letter was written in light of our previous conclusion that company was the consumer of the services rendered by the service bureau.

In view of our present conclusion that company is a retailer rather than a consumer of the printing services, the questions asked in your October 13, letter no longer appear relevant.

Should you have any further questions, feel free to write.

Very truly yours,

T. P. Putnam
Tax Counsel

BY _____
Joseph Manarolla

JM;smb
Enclosures