

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)

450 N STREET, SACRAMENTO, CALIFORNIA

(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 324-2641

FAX 323-3387

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November 7, 1994

BURTON W. OLIVER  
*Executive Director*

Mr. S--- R---  
Certified Public Accountant  
XX --- Street  
---, NJ XXXXX

Dear Mr. R---:

I am responding to your letter of August 16, 1994 in which you ask how sales tax applies to your sales to sponsors of focus group sessions and whether the application of tax would differ if various charges were separately stated on the sales invoices issued by your company or grouped together under the heading "Focus Group Session."

Your business involves coordinating activities connected with these sessions. Although the sessions are run by the sponsor's representatives, you solicit the individuals to participate, provide the facility, food and beverages, and videotapes of the sessions.

Retail sales of tangible personal property in California are subject to sales tax measured by the gross receipts from the retail sale, unless the sale is specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any other purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) The taxable gross receipts from retail sales of tangible personal property include the total amount of the sale, without any deduction for labor and service costs and any other expenses. (Rev. & Tax. Code § 6012(a)(2).)

The series of transactions you describe involve three discrete steps: from a vendor to you, from you to the sponsor, and from the sponsor to the participants. The two steps we must examine to determine whether you are making taxable sales are your transaction with the sponsor and the sponsor's transaction with the session participants. That is, we need to determine whether the sponsor is selling to the participants and thus purchasing from you for resale or whether the sponsor is consuming the property in the course of providing service. If the sponsor is regarded as selling tangible personal property to the participants, then your sale of such property to the sponsor is a nontaxable sale for resale and the sponsor's sale to the participants is a taxable retail sale. In other words, you are making a taxable retail sale to the sponsor of any property which the sponsor is regarded as consuming and not reselling to the

participants. I assume that you understand that you may purchase property for resale from your vendors when you resell the property without using it. I therefore will not discuss the transactions between you and your vendors.

### **1. Transaction between Sponsor and Participants**

The participants contract with the sponsor to provide focus group sessions. The participants are served food and beverages during the session and receive a videotape of the session to take home. We assume that the sponsor is providing "significant educational services," including classroom instruction, and that the property provided to the participants (videotape and food) is merely incidental to those educational services. We further assume that the sponsor is billing the participants in lump sum, with no separate itemization of charges. Sales and Use Tax Annotation 515.0015 (3/31/80) is applicable to these circumstances:

**"Schools.** Schools which provide significant educational services, including classroom instruction, are consumers of printed instructional matter and special instructional sound recordings furnished to students where tuition charges made to students do not separately state charges for such teaching aids. If a separate charge is made for such teaching aids, tax applies to that charge.

"...."

Therefore, based on the assumptions set forth above, we conclude that the sponsor is providing a service, and is not selling tangible personal property.

### **2. Transaction between You and Sponsor**

You contract with the sponsor to solicit the participants for the sessions, and to provide the facility, food and beverages, and videotapes of the sessions.

Since the sponsor is the consumer of all items related to the sponsor's performance of the service of significant educational instruction, you are the retailer of any tangible personal property which you sell to the sponsor. You indicate that you are selling videotapes and food and beverages to the sponsor. Such sales are subject to sales tax whether the charges for such property are separately stated or grouped together under the heading "Focus Group Session." The measure of tax is the gross receipts from the sales.

For purposes of this opinion, we assume that you do not serve the food and beverages you provide, nor are you responsible for such service (e.g., by hiring someone else to do so). Your charge for food and beverages is subject to sales tax since you are selling food for consumption at facilities you provide. (Reg. 1603.) However, based on the assumption that you are not responsible for service of that food and the assumption set forth in the previous section, we conclude that your charge for the facilities is not part of the taxable gross receipts from the

sale of the food and beverages.<sup>1/</sup>

We assume that you perform the solicitation of participants as an option to the sponsor, and that the sponsor is not required to hire you for that purpose in order for you to arrange, and sell, the food and videotapes. As such, we do not regard the solicitation as part of the sale of the tangible personal property, and we conclude that your charge for the solicitation is not subject to sales tax.

In summary, we conclude that you are making taxable retail sales of food, beverages, and videotapes. The gross receipts from such sales are subject to sales tax. We conclude that your charges for facilities and for solicitation of participants are not part of your taxable gross receipts from the sale of the food, beverages, and videotapes. If you separately state the charges for food and beverages, videotapes, solicitation, and facilities, only your separately stated charges for the food and beverages and videotapes will taxable gross receipts. If you bill in a lump sum, you will nevertheless be required to report tax on your gross receipts from sales of food and beverages and videotapes. In this regard, upon audit, reporting an allocated portion of the lump sum price to the sponsor as taxable gross receipts is likely to receive closer scrutiny than reporting based on a separate statement of charges to the sponsor. That is, if you do not separately itemize your charges, we are likely to more closely review your records to determine if the allocation you report is justified. We would encourage you to separately state your charges to the sponsor.

We hope this answers your questions; however, if you need further information, feel free to write again. Since you have not identified any sponsor, this information is provided to you for general information only, and none of your sponsors may rely on the information for purposes of Revenue and Taxation Code section 6596.

Sincerely,

Victor G. Matl  
Tax Counsel

VGM:cl

cc: Out-of-State District Administrator

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<sup>1/</sup>If you served the food, further analysis would be necessary to determine if the gross receipts from the sale of the food include some or all of the charges for the facilities. (See, e.g., BTLG Annot. 550.0260 (6/28/65).)