



STATE BOARD OF EQUALIZATION

(916) 445-6450

December 8, 1989

B--- M---
Bookkeeper
D--- L. S--- & A---, Inc.
XXXX W. --- ---, Suite XXX
--- ---, CA XXXXX

Dear Ms. M---:

This is in reply to your October 18, 1989 letter regarding the application of sales tax to charges by D--- L. S--- & A---, Inc. (DSA), to H--- Corporation (H---) for developing a software metrics course of instruction. You sent a copy of the proposal which you sent to H--- in response to H---'s request for proposal (RFP).

We understand that DSA provides a team of its personnel to consult with H--- to analyze the instruction needed and identify the appropriate formats for instructional materials. The team then develops the materials which consist mainly of a participant's guide and a leader's guide. DSA helps H--- in writing a script for an instructional videotape of the course; however, H--- actually produces the videotape. We understand that the items of tangible personal property which you deliver to H--- are one copy each of the participant's and leader's guides, some transparencies of a type which are used to display text by means of an overhead projector, and a script of dialogue for the videotaped production. Although H--- will duplicate the guides in-house to distribute to the participants of the classes, we assume that H--- does not transfer the pamphlets in the form of a paste-up, mechanical, assembly, or camera-ready copy or in the form of a flat or photoreproduction of such properties. (Cf. Sales and Use Tax Reg. 1541, Printing and Related Arts, subd. (f)(5).)

We believe that the true object of DSA's contract with H--- is the performance of a service; that is, the development of a course of instruction, rather than a sale of tangible personal property. We conclude that, DSA's transfer of the script of the videotape, the participant's and leaders guides, and the transparencies, is incidental to the performance of the service. DSA is the consumer of such tangible personal property, and tax applies to the sale to DSA of the materials used to produce the property. Tax does not apply to DSA's charge to H---.

Ms. B--- M---

-2-

December 8, 1989
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We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr