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August 12, 1994

Mr. H--- S---
President
S--- I---
XXX --- Court
---, CA XXXXX

BURTON W. OLIVER
Executive Director

Re: **SR -- XX-XXXXXX**

Dear Mr. S---:

This is a response to your letter dated July 7, 1994. You state that S--- I--- ("S---") is negotiating to act as a subcontractor in providing microfiche filming and digital scanning services. In performing the subcontractor agreement, you ask:

- "Do we have to charge sales tax for
- the rollfilm/microfiche filming service of customer documents
 - the digital scanning service of customer documents
 - the service of simultaneously filming and scanning of customer documents (in one throughput)."

For purposes of this opinion, we assume that S--- transfers all scanned documents to a computer disk or tape and that its transfers of microfiche and scanned media to its customers are not for resale.

Discussion

Revenue and Taxation Code section 6051 imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in California unless the sale is specifically exempt from taxation by statute. A "retail sale" means a sale for any purpose other than resale in

the regular course of business in the form of tangible personal property. (Rev. & Tax. Code § 6007.) Thus, if S---'s transfer of media containing "scanned" documents, microfiche or both is considered a sale of tangible personal property, it is taxable.

Sales and Use Tax Regulation 1502 explains the application of sales tax to activities involving computers, programs, and data processing. (A copy of this regulation was previously provided to you by the Concord office of the State Board of Equalization.) Subdivision (d)(1) states that the conversion of customer-furnished data from one physical form of recordation to another physical form is taxable unless the contract is for the service of developing original information from customer-furnished data. The scanning of documents does not generally involve the development of new or "original information" since customer data is merely transferred from a "hard copy" to that of a computer-readable format. Rather, your scanning of documents is the transfer from one physical form (documents) to another (the storage media on which the digitized documents are transferred). Consequently, S---'s transfer of media containing scanned information constitutes the sale of tangible personal property subject to sales tax.

S---'s transfer of microfiche products is also subject to sales tax. "Microfiche" is defined as "a sheet of microfilm containing rows of microimages of pages of printed matter" (Webster's Collegiate Dict. (10th ed. 1993) p. 735) and is treated as microfilm for sales tax purposes. Sales and Use Tax Regulation 1502(d)(4) provides that tax applies to charges for microfilming or photorecording except where the microfilming or photorecording is done under a contract for the processing of customer-furnished information. (See also Business Taxes Law Guide Annotation 420.0160 (7/9/53) (sales tax applies to the entire charge made for microfilming records).) As indicated in your letter, S--- does not transfer the microfiche under contract for the processing of customer-furnished information. As such, the transfer of microfiche products is a sale of tangible personal property subject to sales tax.

If you have further questions, feel free to write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

cc: Oakland District Administrator - CH