

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

December 12, 1990

Mr. R--- F. J---
M--- M---, Inc.
XX-XX --- Road
--- ---, --- --- XXXXX-XXXX

Re: SC -- XX-XXXXXX

Dear Mr. J---:

This is in response to your letter dated November 14, 1990 regarding the application of tax to the business of your company, M--- M---, Inc. (MMD). You have previously requested advice from the New Jersey Department of Treasury regarding application of New Jersey's sales tax to your business. That Department has concluded that your business is exempt from sales tax in New Jersey. You ask, since New Jersey does not consider your business a taxable service, how then can California? Prior to answering your specific question regarding the application of tax to your business, I note that each state applies its own unique sales and use tax law to the activities in its own state. Some states tax more activities than do other states while some states tax fewer activities than others. For example, Oregon has no sales tax at all, which does not mean that no sales tax should be charged in any other state.

In your January 4, 1990 letter to the New Jersey Department of Treasury, you state:

“M--- M---, Inc. is a service bureau whose sole purpose is to 1. pick up clients computer tapes and tape cartridges; 2. process them on our NCR Mini Computer attached to an input/output device called a microfiche processor; 3. deliver to the client their tapes and microfilm we created for them.”

In your letter to this Board, you state:

“As I read Pamphlet No. 44-A I feel that as a company, specifically a service bureau, who picks up and delivers tapes from and to non-California locations we are a non taxable service.

“MMD has no tangible property in California.

“MMD occupies no space whatsoever in California.

“MMD has no representative of any kind operating in California.

“The only event that takes place is mailing of microfiche to the California office of another state and a submission of an invoice. The only response is a paid invoice.”

A retailer’s retail sale of tangible personal property in California is subject to sales tax unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) If sales tax does not apply, use tax applies to a person’s purchase of tangible property from a retailer for use in California unless that use is specifically exempt by statute. (Rev. & Tax. Code § 6201.) Regulation 1502, a copy of which is enclosed, discusses more specifically the application of sales and use tax to activities involving computers, programs, and data processing. Some activities are regarded as nontaxable service, for example, custom computer programs meeting the specific requirements set forth in subdivision (F)(2) of Regulation 1502. However, based upon the information you have provided us, we conclude that the activity about which you inquire is the conversion of customer-furnished data from one physical form of recordation to another physical form of recordation. Thus, under subdivision (d)(1) of Regulation 1502, you are regarded as selling the tangible personal property you provide to your customers, that is, tapes and microfilm.

Notwithstanding your comments regarding the activities you actually conduct in California, we note that you hold a Certificate of Registration – Use Tax in California and are therefore regarded as a retailer engaged in business in California. When you make a retail sale of the subject items for delivery into California, you are required to collect use tax and remit that tax to this state. (Rev. & Tax. Code § 6203.) If you make a retail sale of the subject property for delivery outside California to a purchaser known by you to be a resident of this state, it is presumed that the property is purchased for use in this state (meaning that you must collect use tax on your sale and remit it to this state). You may controvert this presumption by a statement in writing, signed by the purchaser or its authorized representative, that the property was purchased for use at a designated point or points outside California. This presumption may also be controverted by other evidence satisfactory to the Board that the property was not purchased for use in this state. (Rev. & Tax. Code § 6247.)

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:wk
2653C

Enclosure

bc: --- --- District Office