



STATE BOARD OF EQUALIZATION

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July 14, 1994

BURTON W. OLIVER
Executive Director

Mr. J--- P. G---
---, --- & Company

XXXX --- --- ----, Suite XXXX
--- ---, CA XXXXX

Re: **C--- W---/L--- A--- M---, Inc.**

Dear Mr. Gibbs:

This is in reply to your May 11, 1994 letter regarding the application of sales tax to charges to C--- W---/L--- A--- M---, Inc., for photography. You provided the following facts:

“1. The C--- W---/L--- A--- M---, Inc. (the Company) started operations in 1993, taking over the multiple listing function of several Los Angeles County Boards of Realtors. The company takes real estate listings from its members, has the data compiled and sorted and provides this data to the real estate members for use in selling and purchasing real estate.

“2. The Company (and its predecessors) negotiated with several vendors to provide these services of compiling and disseminating the listing information. Since the brokerage community has been moving to a computer accessed database, the Company entered into a contract with a vendor that specializes in large computer information systems (as opposed to a more traditional “publishing company” type vendor that was vying for the contract).

“3. The vendor that was selected leases to the Company the computer hardware and software necessary to manage this database as well as provides numerous other monthly services for which they are separately charges (sic). One of the services provided to the company is photographic processing services. According to the agreement... ‘(the vendor) will shoot and digitize color photos

for the fees identified in Attachment A. Once digitized, the system will store MLS photos in 'Quick Photo (tm)' and quarter screen formats for black and white and color. Photos may be accessed by on-line subscribers using equipments (sic) that meets the specifications contained in Attachment D. Initial and ongoing photos will be added to the system (actives and comparables) at prices contained in Attachment A. (The vendor) will provide all necessary equipment and services to shoot and digitize photos.'

"The Company pays a separate charge for this service based on the number of photographs processed. Neither the Company or the member receives an actual photograph.

"4. After all of the information has been input and processed, the members who pay a participation fee may, by modem, access the listings in the database.

"5. At the end of the process of developing and updating the database, the vendor prints a camera ready master to be used to print MLS books for those members who desire a hard copy. The company also pays a separate charge for this printing service.

"6. The camera ready master is then sent to a printer to print copies of the MLS books that are delivered to the members who ordered them.

"7. The Company charges a monthly participation fee to members and provides them with a variety of services including access to the database.

"8. The Company also sells book subscriptions on a quarterly basis and sells single copies to those members who order them.

"9. The Company pays (or paid) sales tax to the company that prints the books.

"10. The Company also pays sales tax to the vendor that produces the database on the cost of the photographic processing service."

Given this information, you asked the following specific questions:

"1. Is the tax paid for the photographic services correctly collected since no tangible personal property is produced?"

You did not provide sufficient facts for us to determine whether we agree with your conclusion that no tangible personal property is produced. You note that the vendor leases the computer hardware to the Company. If the vendor provides the digitized photographic images on a disk, tape or other storage medium to the Company for its use, the vendor's transfer of the storage medium is a retail sale of tangible personal property subject to tax. On the other hand, if the vendor sends the digitized photographic images to the Company solely by remote telecommunications, such as by modem, we do not believe the transfer is a transfer of tangible personal property and tax does not apply to the charge for the images.

“2. If the tax on the photographic service is properly collected, is the Company entitled to a credit for tax-paid purchases since process results in the finished product is the MLS book? (sic)”

No, the tax-paid purchases resold deduction applies when a retailer resells tangible personal property before making any use of the property. (Sales and Use Tax Reg. 1701, “Tax-Paid Purchases Resold,” subd. (a).) Under the facts you present, if the vendor transfers the photographic images to the Company embodied on tangible personal property, the Company does not sell the tangible personal property prior to use. Rather, the Company uses the tangible personal property to transfer the images onto computer hardware. Further, even if the Company did not transfer the images onto the computer hardware but only reproduced them in the books, the tax-paid purchases resold deduction would not be applicable. The transfer of photographs to a publisher to reproduce in a publication is a taxable retail sale. (Cf. Sales & Use Tax Reg. 1590, Newspapers and Periodicals, subd. (a)(3).)

Of course, there are other sales and use tax implications to the transfers you described. For example, the lease of the hardware and software to the Company is subject to use tax.

Tax applies to the vendor's charge for a camera-ready master when the master consists of topography combined with illustrations.

You noted that the Company sells book subscriptions on a quarterly basis. In such case, the Company may issue a resale certificate to the printer of the books. If the MLS books qualify as periodicals, as defined at subdivision (c) of Revenue and Taxation Code section 6362.7, tax does not apply to the Company's sale of those books by subscription if the Company delivers the books by mail or common carrier. Enclosed is a copy of Sales and Use Tax Annotation 385.0350 which provides the criteria to apply to determine whether particular multiple listings service books contain ten percent or more news or information for purposes of Section 6362.7, subdivision (c).

Mr. J--- P. G---

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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
Senior Tax Counsel

RLD:plh

Enc. Annotation 385.0350

cc: --- District Administrator - -