



STATE BOARD OF EQUALIZATION
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Fourth District, Los Angeles

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Executive Director

July 2, 1997

Mr. W--- C---
V---
P.O. Box XXXXX
---, CA XXXXX

Re: V---
No Seller's Permit

Dear Mr. C---:

This is in response to your letter dated May 15, 1997, in which you ask whether a seller's permit is necessary for the business you recently started. You state:

"The name of the business is V---. It is a partnership. It provides services that convert audio and video, typically stored on VHS, Hi8 and Betacam tapes, into digital formats. Our clients give us their tapes containing the audio and video (e.g. a VHS tape containing a movie). We do the conversion and give them back the digitized audio and video in the form of computer files. Our clients will typically put these computer files on to compact disks (CD). They will then make lots of duplicates and sell them to their distributors or directly to consumers."

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

Neither the sales tax nor the use tax applies to charges for services not constituting sales of tangible personal property. (Reg. 1501.) Whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the

performance of a service depends upon the true object of the contract. (Id.) If the true object of the contract is the performance of a service, the transaction is not subject to sales or use tax. Persons engaged in the business of rendering services are consumers, not retailers, of the tangible personal property transferred incidentally in rendering that service. (Id.) However, if the true object of the contract is the procurement of the tangible personal property, the transfer of such property to the customer is regarded as a sale of tangible personal property subject to tax.

In the present case, our understanding is that V--- is not developing new information. V--- is merely converting information stored in analog format on tapes into digital format on computer disks. In other words, V--- is converting one physical form of tangible personal property to another. The real object sought by V---'s customers is the computer disks containing the digital files so that they can put the files on compact discs. Thus, V---'s charges for the computer disks containing the digital files are taxable. (See, e.g., Reg. 1502(d)(1).)

With respect to the seller's permit, Sales and Use Tax Regulation 1699 (copy enclosed) provides that every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated. As discussed above, V--- is a seller of tangible personal property. As a seller of tangible personal property, V--- should apply for a seller's permit at its local Board office.

If you have any further information, please write again.

Sincerely,

Sophia H. Chung
Tax Counsel

SHC:rz

Enclosure: Sales and Use Tax Regulation 1699

cc: --- District Administrator - (--)