



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

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June 24, 1994

BURTON W. OLIVER
Executive Director

Mr. J--- C---
S--- T--- R--- G---
XXXX --- --- North, Suite XXX
--- ---, CA XXXXX

Re: **REQUEST FOR RULING**

Dear Mr. C---:

This is in reply to your March 23, 1994 letter regarding the application of sales and use tax to various charges for printing and office services. You provided the following descriptions of the various charges:

“Services in general: Some of our clients sell various forms of printed matter and related tangible personal property. These items range from photocopies and letterhead to T-shirts, buttons and floppy disks. Often our clients perform services that are not subject to tax for customers who have also purchased tangible personal property. These services typically include:

- Folding.
- Word Processing.
- Stapling.
- Resume composition.
- Miscellaneous non-fabrication labor per hour.

“a. Are these services subject to tax when they are performed by a person who has also provided tangible personal property on which the services are performed?

“b. Is the answer different if the services are performed on tangible personal property that is provided by the customer?”

Generally, when a retailer makes a retail sale subject to sales tax, the taxable gross receipts are the total amount of the sale without any deduction on account of the cost of the property sold, material used, labor or service cost or any other expense. (Rev. & Tax Code section 6012, subd. (a).) The total amount of the sale price includes any services that are a part of the sale. (Rev. & Tax Code section 6012, subd. (b).) In an August 16, 1978 opinion, annotated as Business Taxes Law Guide Annotation 295.1690, the Board's legal staff defined "services that are a part of the sale."

"Services that are a Part of the Sale" include any the seller must perform in order to produce and sell the property, or for which the purchaser must pay as a condition of the purchase and/or functional use of the property, even where such services might not appear to directly relate to production or sale costs. Thus, charges described by a seller of catalogs as for preproduction research and consultation services and for postproduction merchandising consultation services are part of the taxable sales price of the catalogs, whether separately stated or not. The first "service" is a necessary prelude to catalog production; and the second is furnished only to catalog purchasers who are required to pay for the service when they purchase the catalogs, whether or not it is desired or used."

When your clients sell printed matter, the clients' charges for word processing, folding, or stapling are includible in the gross receipts of the sale of the printed matter as a charge for a service that is part of the sale. A separately stated charge for composing a resume is not taxable when the purchaser of the printing is not required to contract with the printer for the composition service.

We would need more facts as to a charge for "non-fabrication labor per hour" in order to provide you with an opinion as to the application of tax to the charge.

Charges for fabrication of tangible personal property for consumers are subject to sales tax whether the retailer or the customer supplies the materials used in the fabrication. (Rev. & Tax Code 6006, subd. (b).)

"Mailing Services: These are charges for preparing literature to be mailed, usually to potential customers of the purchaser of the service. The following services are typically performed:

- Folding.
- Addressing.
- Inserting.
- Affixing mailing Labels.

- Adding postage to the mailer or envelope.
- Placing the items in the mail.

“a. Are charges for these services subject to tax?”

“b. Are charges for these services subject to tax when they are separately stated on an invoice that also includes charges for the sale of printed matter?”

Enclosed is a copy of Sales and Use Tax Regulation 1504, Mailing Lists and Services. Subdivision (b) provides the application of tax to charges for mailing services. See also Sales and Use Tax Regulation 1541, Printing and Related Arts, subdivision (c). As noted in Regulation 1541, charges for folding for the purpose of mailing printed matter are not taxable provided the charges are separately stated on invoices and in the accounting records.

“Self Serve Copier Service: This is a service whereby customers are allowed to use copy machines to make photocopies. The copy machines are located at retail locations which are visited by customers. The customers are charged a per copy fee for the use of the copier. The paper and supplies necessary to operate the copiers are provided by the owner of the copiers and not the customer. Are these charges subject to tax?”

“a. Customers may pay for the above service by purchasing a magnetic card. The card can be read by the copy machine. Based on the amount paid for the card, the copier will allow the user to make a pre-programmed number copies. Are charges for these cards taxable?”

“b. Can the service provider issue a resale certificate when purchasing the copiers that will be used to provide the self-serve service?”

Enclosed is a copy of Sales and Use Tax Regulation 1574, Vending Machine Operators. Subdivision (b)(1)(a) provides that, except for certain sales by and on behalf of libraries, tax applies to sales of photocopies through coin or card operated machines. Although the Board's legal staff has taken the position that the sale of a “copy-card” is not a sale of tangible personal property, the sale of the card is an advance collection of gross receipts for the sale of a certain number of copies. The customer makes the copies with the card at the customer's convenience, and sales tax applies to the sale of the copies. The retailer is liable for sales tax on those sales and may properly collect the sales tax reimbursement from customers at the time the retailer sells the “copy-cards.”

The retailer does not lease or sell the copy machines under those circumstances and cannot issue a resale certificate when purchasing the machines.

“Facsimile Services: Customers are charged an amount for sending or receiving faxes. The fee is typically based on the number of pages sent or received.

“a. Are these charges subject to sales or use tax?

“b. If the sender of the facsimile is located in another state or county are the charges subject to sales or use tax?

“c. If the recipient of the facsimile is located in another state or country are the charges subject to sales or use tax?

“d. Same three questions as above, but with respect to telecommunications excise taxes?”

We have taken the position that transfers of information by means of telecommunication are not subject to sales tax.

This Board does not administer any telecommunications excise taxes that would apply to your charges other than those taxes which the utility company charges you on its billing.

“Word Processing Services: This category is comprised of charges for entering text into a computer via a keyboard. The content of the text is provided by the customer. The product that is delivered to the customer is either a printed document or a computer disk containing the file embodying the text.

“a. Is this charge subject to tax?

“b. In some cases, this charge may be made in conjunction with the design of a document that also contains images such as a logo or other computer stored artwork. Does this scenario alter your answer to part a?”

Assuming that the product of the word processing is composed type only with no illustrations or other artwork, the charge is nontaxable whether the composed type is delivered to the customer in the form of a printed document or on a computer disk.

If the document contains illustrations; logos; hand-lettering; or hand-drawn, borders of fancy curved lines, the product is not “composed type only,” and the charge for such pages of the document is taxable. (Bus. Taxes Law Guide Anno. 430.0365.)

“Self Serve Computers, Printers & Typewriters: This is a charge for allowing customers to use computer hardware and typewriters on the premises of the service provider. Are the following charges subject to tax?

“a. Per hour charges for the on-site use of typewriters or computer hardware? Does this answer change depending on whether or not tax was paid on the purchase of the computer and typewriters?

“b. Additional charges for printing out documents? The fee for this service is based on the number of pages printed.

“c. Included in the per hour charge for the use of the computer is the fee for the use of the software that is installed on the computer. Can the service provider issue a resale certificate to the seller of the software?

“d. Can the service provider issue a resale certificate when purchasing the computers that will be used in the self-serve computer and typewriter service?

“e. In some cases, customers may rent portable computers that are removed from the premises of the service provider. Does the application of tax change under these circumstances?”

The lease of tangible personal property is generally a sale or purchase of the tangible personal property and subject to use tax. The tax is imposed on the lessee. Enclosed is a copy of Sales and Use Tax Regulation 1660, Leases of Tangible Personal Property - In General. As provided in subdivision (b)(1)(E), “sale” and “purchase” do not include a lease of tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor as to which the lessor or his transferor acquired the property in a transaction that was a retail sale with respect to which the lessor or the transferor has paid sales tax reimbursement or has timely paid use tax to the Board measured by the purchase price of the property.

The definition of “lease” excludes the granting of use of tangible personal property for less than one day for a charge of less than \$20 when the grantor restricts the privilege to use the property to the business location of the grantor. Therefore, if your client purchases computer hardware and typewriters for the purpose of allowing customers to use the property only on site, and the customer uses a typewriter or computer for less than one day and the charge is less than \$20, your client has not leased the computers. In that case, your client’s charge is not subject to sales or use tax, and your client should pay sales tax reimbursement or use tax on the purchase of such typewriters and computers. If your client makes an additional charge for printing out documents, tax applies to the additional charge.

The client may only issue a resale certificate to purchase typewriters, computers, and software which it will transfer to the customers as true leases and not otherwise to use. For example, your client may not issue a resale certificate to purchase the computers, typewriters, and software to use as described above where the client will restrict its customer to use the tangible personal property on-site for a period of less than one day and for a charge of less than \$20.

If your client purchases portable computers solely to lease to customers who may remove the computers from the client's premises, your client may issue a resale certificate and collect tax on lease receipts. As provided at subdivision (c)(2) of Regulation 1660, your client's leases are not subject to tax if your client leases the computers in substantially the same form as acquired, and your client has paid sales tax reimbursement or timely paid use tax measured by the purchase price.

“Film Processing: This service is segregated into two charges: (1) charges for developing film and (2) charges for prints. Charge (2) is based on the number of prints provided to the customer. Are either of these charges subject to tax?”

Enclosed is a copy of Sales and Use Tax Regulation 1528, Photographers, Photostat Producers, Photo Finishers and X-ray Laboratories. Subdivision (b) provides the application of tax to charges for photo-finishing. Assuming that the charge for developing film is developing negatives from which the processor will make prints, the charge for the negative development is not subject to sales tax. The charge is for a service, and tax applies to the sale to the processor of tangible personal property consumed in the process. Tax applies to the processor's sales of prints. (Reg. 1528, subd. (b)(1).) If the processor develops film by the reverse process (e.g., 35mm. slides), the charge for developing is subject to sales tax.

“Shipping and Postage: These are charges for shipping tangible personal property at the direction of customers. These charges generally arise under the following conditions:

“a. The customer purchases printed material and directs the service provider, who is also the seller of the printed matter, to ship the materials (e.g. marketing brochures) to a list of addresses. In addition to the bill for the printed material and the mailing services, the service provider charges the customer a separate amount for the cost of the postage. The postage charge is generally related to delivery by the U.S. Mail, but in some cases it may be for delivery via another carrier. Is this postage charge subject to tax?”

“b. The customer purchases printed matter or other tangible personal property and directs the seller to ship the goods to the customer's business location or other destination. This type of delivery is almost always via common carrier (e.g.

U.P.S.). The seller makes a separate charge for the delivery. There is no stipulation in any of the documents transferred between the buyer and seller regarding the F.O.B. point. Is this delivery charge subject to tax?

“c. The customer brings tangible personal property to the service providers business location. The customer arranges to have the service provider ship the goods via one of many alternative methods (e.g. U.P.S., Federal Express overnight, 2-day U.S. Postal Service, etc.). The service provider charges the customer an amount which is higher than the service providers cost for the shipping. Is this shipping service subject to tax? Would the answer change if the service provider only charged the customer an amount equal to the service provider’s cost?”

The separately stated charge for postage for mailing the printed matter is not subject to sales tax. (Sales and Use Tax Reg. 1541, subd. (c).) Assuming the separately stated charge for the transportation does not exceed the cost of the transportation to your client, the charge is nontaxable whether delivered by the United States Mail or by another carrier.

Enclosed is a copy of Sales and Use Tax Regulation 1628, Transportation Charges. As noted in subdivision (a), tax does not apply to separately stated charges for transportation of property from the retailer’s place of business directly to the purchaser by common carrier.

Under the facts you provide in paragraph (c) we assume your client merely provides the service of mailing and does not make a sale of tangible personal property. In that case, tax does not apply to the client’s charge whether your client’s charge is equal to or more than the cost of the shipping.

“Misc. Computer Services: These are charges for conducting computer operations requested by customers. The services fall into the following three general categories:

“a. Converting data provided by a client from one form of media to another. For example, transferring data from a 3&1/2” diskette to a 5&1/4” diskette, or converting Apple Macintosh files to an IBM compatible format. The source disk is provided by the client who may, or may not, furnish the target disk. Is this service subject to tax?

“b. Scanning images provided by customers. The scanned image is provided to the customer on a computer disk, or the image may be used in a document which is printed by the service provider and given to the customer. A separate charge is made for the scanning service. Is this scanning charge taxable?

“c. Using the computer to design documents for customers. A customer indicates the general format of a desired printed product. The service provider uses desktop publishing software to design the document (e.g. flyers, advertising mailers, etc.). The design is incorporated into a printed product for which a separate charge is made. Is this design charge subject to tax?”

The charge for converting data from one medium to another is subject to tax. (Sales and Use Tax Reg. 1502, Computers, Programs, and Data Processing, subd. (d)(1).) Tax applies to the charge whether the charge is to transfer data from one size diskette to another or to convert from an Apple format to an IBM compatible format and regardless of whether your client or the customer provides the target or destination diskettes. (Sales and Use Tax Reg. 1502 subd. (c)(2), (d)(1).)

When your client scans images onto a computer disk to provide to the client, the charge for the scanning is subject to tax. (Reg. 1502, subd. (c)(4).)

When your client uses a computer to design documents, and the output includes artwork, the application of tax may vary depending upon the facts. In order for us to provide you with a definitive answer, we would need a complete description of the facts of the transaction.

“**Rentals:** These are charges for the use of various tangible and personal property. Are the following charges subject to tax?”

Mail box rentals

Conference room rentals (hourly rate)

Office space rentals (hourly rate)

On-site rentals of audio visual equipment (hourly rate)

“Can the service provider issue a resale certificate when purchasing tangible personal property that will be rented to customers?”

Since the facts you provide indicate that the charge for any furniture or equipment in the conference room or office and the audio visual equipment would be for the customer’s use of the property restricted to your client’s premises for a period of less than one continuous twenty-four hour period and for a charge of less than \$20, your client does not thereby lease the tangible personal property. Your client should pay sales tax reimbursement or timely pay use tax on the purchase. Assuming that the mail boxes are affixed to the client’s realty, the charge for the mail boxes is a charge for the lease of real property. Your client would be the consumer of the mail boxes, and tax would not apply to your client’s charge for the use of the mail boxes.

“Coffee: Are sales of prepared coffee, by a non-restaurant, for consumption on the seller’s premises, subject to tax?”

Assuming the retailer of the coffee does not charge an admission for entrance, is not a drive-in, or does not provide facilities for consuming food, the charge for the coffee is nontaxable. (Sales and Use Tax Reg. 1603, Taxable Sales of Food Products, subd. (e)(1).)

We hope this answers your questions; however, if you need further information, feel free to write again. Since you have not identified any client, this information is provided to you for general information only, and none of your clients may rely on the information for purposes of Revenue and Taxation Code section 6596.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:plh

Enclosures - Regs. 1504, 1528, 1574, 1628, 1660.