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December 4, 1992

BURTON W. OLIVER
Executive Director

Mr. E--- G. H---
R--- R--- Incorporated
P. O. Box XXXX
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. H---:

This is in response to your letter dated October 19, 1992 in which you state:

“Our reports are basically a synopsis and codification of data that we obtain and enter on a daily basis from the Official Records in the County Records Office. The fee of approximately \$400 per month, that we charge to provide the intangible information and data to each one of the limited number of subscribers to our service, has no relationship to the tangible property that it is photocopied onto for distribution. Thus, the value of the medium that the information is transferred to the customer on is insignificant. I would also like to note that we do not have a resale number and therefore pay sales tax on the paper that is used and also on the charges by the graphics company that make the photo copies of the reports for us.

“It is our position that the value to our customer is the information secured and not the media and is therefore similar in nature to the following court cases:

“Washington Times-Herald, Inc. v. District of Columbia, 94 U.S. App DC 154, 213 F 2d 23 (1954), and Dun and Bradstreet, Inc. v. City of New York, 276 NY 198, 11 NE 2d 728 (1937).

“It should also be noted that our reports are just a right to use the data since they bear a copy right notice and cannot be reproduced without our permission.”

You enclosed copies of two sample reports. The first report, on title company activity in Contra Costa County, contains graphs and charts regarding sales, insured transactions, market shares, resales, refinancing amounts, etc. The second report contains charts on lender activity for Contra Costa County.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. A “sale” includes any transfer of title or possession of tangible personal property for a consideration. Rev. & Tax. Code § 6006(a). On the other hand, a transaction which is a service is not subject to sales tax even though there is a transfer of tangible personal property if the transfer of such property is incidental to the performance of the service. Sales and Use Tax Regulation 1501.

In California, there is no general exemption for sales of information when the information is delivered in tangible form. Nor does the relative value of the component parts of the tangible property to the total value of the property bear on this issue. The value of the paint and canvas in a Picasso painting is minuscule compared to the overall value of the painting. Yet a transaction transferring title or possession of the painting for a consideration is a sale.

The only issue here is whether a customer has contracted for the information or for the service of compiling the information. In determining whether the transfer of information on a tangible medium is a service or sale, the important consideration is whether the information was gathered at the request and pursuant to the specifications of a single customer to meet that customer’s needs.^{1/} Service transactions are personal. Information which is mass-produced on tangible medium and marketed to the public at large or to a particular group of persons is not being provided as part of a personal service. It appears from your letter that the R--- reports provided to the subscribers are standardized reports, each identical to the other for a particular month and activity. Therefore, when your business transfers such reports on a tangible medium (e.g. on paper or on floppy disks), it is making sales of tangible personal property.

Sales of such reports on or after November 1, 1992, however, may be exempt from tax under the periodical exemption set forth in Revenue and Taxation Code section 6362.7(b) and (c) which reads:

^{1/}See McGraw-Hill, Inc. v. Comptroller of the Treasury (Md. Tax Court 1990) 1990 Md. Tax LEXIS 10 which held that subscriptions to Dodge Reports are taxable sales. See also Consolidated Freightways Corporations v. Department of Taxation (1987) 112 Idaho 652 which held tariff schedules are taxable.

“(b) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property which becomes an ingredient or a component part of any periodical regularly issued at average intervals not exceeding three months, and any such periodical, that is sold by subscription and delivered by mail or common carrier.

“(c) For purposes of this section, ‘periodical’ means any publication that appears at stated intervals at least four times per year, but not more than 60 times per year, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The term does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.”

We assume from your letter and the sample reports which you enclosed that the reports for a particular county are published monthly and therefore meet the “regularly issued at average intervals” requirement. We also assume that the reports are sold by subscription and are delivered to the customers by mail or common carriers. Thus, the only question left is whether the reports are a “periodical” as defined in the statute.

The sample reports you enclosed contain information of general interest to some particular group of persons and are not printed sales messages, shopping guides, or other publications in which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire report. If each county and activity report bears a relationship to prior or subsequent reports with respect to similarity of subject matter, if there is a connection between the different reports in the nature of the articles appearing in them, and if each report is sufficiently similar in style and format to make it evident that it is one of a series, then the periodical exemption applies if our assumptions in the prior paragraph are correct.

If the periodical exemption applies, your subscriptions to such reports are not taxable and your business may purchase items which become an ingredient or a component part of the report ex tax by issuing the vendor an exemption certificate.

You also asked if your transactions are taxable if the information is sent over telephone lines. Information transferred by electronic transmission such as telephone wires is not delivered in tangible form. Therefore, assuming no other tangible personal property is transferred, charges for information transmitted electronically are not taxable.

Mr. E--- G. H---

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December 4, 1992
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If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

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