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November 2, 1992

REDACTED TEXT

Dear REDACTED TEXT:

This is in reply to your August 12, 1992 letter regarding the application of sales tax to certain charges related to printing.

You note that REDACTED TEXT Magazine is published for use by printing and commercial mailing businesses in Northern California. You may undertake to produce a monthly column in the magazine dealing with specific work performed by retailers in the printing industry. In that regard, you asked that we provide you with a report on the application of sales tax to charges for folding in connection with the retail sale of printed matter. Specifically, you asked for information concerning charges to a printing customer who has purchased a single-page advertisement and had the printer fold the single page twice to permit insertion into an envelope.

California sales tax is imposed directly upon retailers at the applicable rate of the gross receipts from the sale of all tangible personal property sold at retail in this state. (Rev. & Tax. Code § 6051.) The amount the retailer collects from its customer is reimbursement for the tax. Whether the retailer collects the reimbursement from the customer is a matter of contract between the two parties. (Civ. Code § 1656.1.)

When the retailer makes a retail sale, sales tax applies to the total gross receipts of the sale. "Gross receipts" includes the total amount of the sale price, valued in money, whether received in money or otherwise without any deduction on account of the cost of the materials used, labor or service cost, interest paid, losses, or any other expense. (Rev. & Tax. Code § 6012.) Therefore, if a printer makes a retail sale of a printing job, the taxable gross receipts of the sale include any part of the charge for services that are a part of the sale. For example, if a customer contracts to have the printer provide printed brochures that are folded, tax applies to the total amount charged to the customer including the charge for folding.

Subdivision (c)(7) of Revenue and Taxation Code section 6012 excludes from the definition of "gross receipts":

"Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of

the retailer or the cost to the retailer of transportation by other than facilities of the retailer; provided, that if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser."

In this regard, Sales and Use Tax Regulation 1541, Printing and Related Arts, provides at subdivision (c):

"MAILING. Tax does not apply to charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing or mailing letters or other printed matters, provided such charges are stated separately on invoices and in the accounting records. Tax applies, however, to charges for envelopes."

If the folding of the advertisements is merely incidental to the nontaxable mailing service provided by the retailer, tax does not apply to the charge for folding.

Tax applies to charges for producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting. (Rev. & Tax. Code § 6006, subd. (b); Sales and Use Tax Reg. 1526, Producing, Fabricating, and Processing Property Furnished by Consumers-General Rules.) Producing, fabricating, and processing include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. The terms do not include operations which do not result in the creation or production of tangible personal property or which do not constitute a step in a process or a series of operations resulting in the creation or production of tangible personal property but which merely constitute repairing or reconditioning the property to refit it for the use for which it was originally produced. Therefore, if a customer takes its own paper and ink to a printer to have the printer produce documents from the paper, the printer's charge is subject to sales tax as a sale of fabrication labor. Similarly, a printer's charge for folding an advertisement for a customer is subject to tax as a sale of fabrication labor unless the folding is merely incidental to a mailing service provided by the printer. (Sales and Use Tax Reg. 1541, subd. (c).)

You also noted the following subjects which you believe may be of interest to your readers:

"Computer printout of mailing labels. In this case, the basis might be that of a commercial mailer who has received a mailing list from a customer that requires upgrading to ZIP+4 addressing to U.S. Postal Service requirements. Does the commercial mailer charge sales tax for conversion, and on what basis?"

Enclosed is a copy of Sales and Use Tax Regulation 1504, Mailing Lists and Services.

As noted in subdivision (b), tax does not apply to charges for services rendered in preparing material for mailing. Assuming that the commercial mailer is merely providing nontaxable mailing services to the customer, the upgrading of the zip code to ZIP+4 is part of the service, and the charge is nontaxable.

"Computer generated artwork. The basis might be a retailer of keyboarding or computer services who generates computer artwork, such as a company logo or illustration to become the property of the customer, without 'pasting down' the finished printout. Is there tax liability, and if so, on what basis is it figured?"

Enclosed is a copy of Sales and Use Tax Regulation 1502, Computers, Programs, and Data Processing. As noted in subdivision (c)(4) of the regulation, charges for the transfer of computer-generated output are subject to tax where the true object of the contract is the output and not the services rendered in producing the output. For example, tax applies to charges for any artwork, graphics, designs, and logos.

"Non-profit organization sales. A basis might be a printer which produces fund-raising literature which the customer will mail independently. How does the printer legally establish an acceptable not-for-profit identification of the customer, is there tax liability, and on what basis?"

There is no exemption from sales tax merely on the basis that the purchaser is a nonprofit organization. On the other hand, there is an exemption for the gross receipts from the sale of tangible personal property to:

- (a) The United States, its unincorporated agencies and instrumentalities;
- (b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States;
- (c) The American Red Cross, its chapters and branches.

Enclosed is a copy of Sales and Use Tax Regulation 1614, Sales to the United States and Its Instrumentalities, for your further information. Sales tax applies to sales to the state of California and local governmental agencies.

"Keyboarding to customer's computer disc. The basis could be that of a customer who brings typewritten material to a keyboarding person or office (which holds a sales tax permit), for conversion to a computer disc for the customer. In turn, the customer, at some point, will send the disc to a computer-equipped printing house on a commercial printing order. In this case, the customer could be the publisher of a monthly commercial newsletter which carries advertising of suppliers to that field, and advertising for services of the publisher."

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You asked first for the application of tax to the charge for the "keyboarding." Tax applies to charges for mere data entry. On the other hand, you note that the customer will send the disc to a computer-equipped printing house. Tax does not apply to charges for the service of composing type. (Rev. & Tax. Code § 6010.3; Sales and Use Tax Reg. 1541, subd. (f).)

You also asked how tax would apply to the charge by the printer to the newsletter publisher for conversion of the computer disc data to a printing plate format. Tax applies to transfers of plates made from typography. Tax would apply to the entire charge including any portion of the charge attributable to type composition performed by the retailer of the printing plate, whether the charge is separately stated or not. (Sales and Use Tax Reg. 1541, subd. (f)(3) and (5).)

We hope this answers your questions; however, if you need further information, feel free to write again. Although we would be unable to compose monthly articles for your newsletter, we would be glad to review your articles and answer your questions regarding the application of tax.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Encs.

REDACTED TEXT