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LEGAL DIVISION (MIC:82)
 450 N STREET, SACRAMENTO, CALIFORNIA
 (P. O. BOX 942879, SACRAMENTO, CA 94279-0001)
 TELEPHONE: (916) 324-2655
 FAX: (916) 323-3387

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September 7, 1995

BURTON W. OLIVER
 Executive Director

J--- F---
 B--- H--- P--- Co.
 XXXX-A --- --- Drive
 --- ---, CA XXXXX

Re: Printing and Related Activities

Dear Ms. F---:

This is in response to your letter of April 19, 1995 regarding the application of sales tax to B--- H--- P---'s (BHP) charges related to the sale of printing.

In that letter you ask numerous questions to which I shall respond individually in turn. Many of your questions do not contain sufficient facts from which I can make an accurate determination. I will make assumptions as seem appropriate to provide you with some guidance. If the assumptions that I make are incorrect and you wish further guidance, please write giving more details of the precise facts surrounding your inquiry.

An outline of basic sales tax law relevant to your inquiries follows.

Section 6051 of the Revenue and Taxation Code imposes the sales tax on retailers for the privilege of selling tangible personal property at retail in California. The measure of tax is based on gross receipts from the retail sales in this state of tangible personal property. The taxable gross receipts include charges for services that are a part of the sale, such as overtime and set-up charges and charges for die cutting, embossing, and folding (except for folding in preparation for the purpose of mailing). A retail sale means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (Rev. & Tax Code § 6007.)

A sale means and includes 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(b).) Therefore, tax applies to charges for printing, lithography, photo lithography, rotogravure, gravure, silk screen printing, imprinting, multilithing, multigraphing, mimeographing, photostating, steel die engraving, and similar operations for consumers, regardless of whether or not the paper and other materials are furnished by the consumer.

(Sales and Use Tax Reg. 1541(a).) Printers are consumers of property purchased for use in the preparation of printed matter to be sold, unless title to such materials is transferred by the printer to his or her customer before the materials are used. If title to the material is not transferred from the printer to his or her customer before use, tax applies on the sale of the materials to the printer. Tax also applies on the sale of the materials following their use by the printer. (Sales and Use Tax Reg. 1541(d).)

Printers may purchase for resale raw materials from which they fabricate special printing aids or special printing aids fabricated by others, provided the printer transfers title to the special printing aids to the customer prior to the printer's use of the special printing aids. "Special printing aids" are those printing aids which are of unique utility to a particular customer and which are reusable. (Sales and Use Tax Reg. 1541(e)(1).) Special printing aids include electrotypes, stereo types, photo engravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, single color or multicolor separation negatives, and flats.

Tax applies to the printer's retail sale to the customer of the special printing aids. The measure of tax includes charges for the fabricating of raw materials into such special printing aids. Tax applies regardless of whether the invoice upon which the special printing aids are billed is for printed matter the sale of which is exempt as a sale in interstate commerce, an exempt sale of a newspaper or periodical, a sale for resale, or otherwise. The sale of special printing aids located in this state and used here following the sale is not exempt as a sale in interstate commerce. (Sales and Use Tax Reg. 1541(e)(2).) Your questions and our responses follow:

"1. When an item is part of the product packaging should we have a resale card on file? What if a client does not have one?"

I assume you are describing a case where BHP prints labels or stickers for a customer who then affixes them to property that the customer sells. I also assume the second part of your question asks what BHP should do if the customer does not have a seller's permit.

The sale and use of nonreturnable containers when sold empty to persons who place the contents in them and sell them filled are exempt from sales and use tax. Labels qualify as nonreturnable containers if the purchaser affixes them to property to be sold and sells them along with and as part of the property. (Sales and Use Tax Reg. 1589(b)(2).) However, items such as price tags, shipping tags, and advertising matter used in connection with the sale of property or enclosed with the property sold do not qualify as non returnable containers for purposes of the exemption. Sales of such items are subject to tax. (Sales and Use Tax Reg. 1589(b)(2)(A) & (B) & (c)(1).)

BHP is relieved of the liability for sales tax on the sale of items qualifying as nonreturnable labels if BHP timely accepts in good faith an exemption certificate from the purchaser in accordance with Sales and Use Tax Regulation 1667, Exemption Certificates. If BHP's sale of labels is not exempt from tax under section 6364, but the purchaser is otherwise

purchasing the labels for resale in the regular course of business, the following discussion applies.

Subparagraph (a)(1) of Sales and Use Tax Regulation 1668 provides that the burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes a certificate from the purchaser that the property is purchased for resale. If timely taken in good faith from a person who is engaged in the business of selling tangible personal property, and who holds a California seller's permit, the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate is timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at, or prior to, delivery of the property to the purchaser.

“2. Printed newsletter goes direct to mail house. Recipient receives at no cost to them. Client feels graphics/composition should be non taxable as well as printing.
Yes or No”

There are exempted from the sales and use taxes the sale and use of tangible personal property which becomes an ingredient or component part of any newspaper or periodical that is distributed without charge and regularly issued at average intervals not exceeding three months, but not more than 60 times per year, and any such newspaper or periodical. (Rev. & Tax Code section 6362.7).

In order to qualify as a periodical each issue must contain news or information of general interest to the public, or to some particular organization or group of persons. Further, 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 different issues in 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 is one of a series. The definition of periodical does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90% of the printed area of the entire issue in more than one half of the issues during any twelve month period. (Sales and Use Tax Reg. 1590(a)(2).) Enclosed is a copy of Sales and Use Tax Regulation 1590, Newspapers and Periodicals, for your information.

The term “ingredient or component part of a newspaper or periodical” includes only those items that become physically incorporated into the publication and not those which are merely consumed or used in the production of the publication. For example, newsprint and ink are ingredients of a newspaper; however, a photograph does not become an ingredient or component part of a newspaper or periodical merely because the image of the photograph is reproduced in the publication. (Sales and Use Tax Reg. 1590 (a)(3).)

If your sale of the newsletter qualifies as an exempt sale of a periodical, tax does not apply to any of your charges including the portion of your charge attributable to your cost of producing the graphics and composition. If you also sell the graphics to your customer, tax applies to your sale of the graphics. Although tax does not apply to charges solely for type composition, tax applies to the sale of a paste-up, mechanical, assembly, or camera ready copy which consists of type matter combined with artwork. (Sales and Use Tax Reg. 1541(f)(3).)

“3. Shrink wrap material used when we package job for pick up. Taxable or not. What about cardboard boxes, letterhead boxes, bus. card boxes etc?”

I assume your question is whether the sale of such nonreturnable containers to BHP is taxable when BHP purchases the containers to fill with printed matter which BHP sells to its customers.

A “container” includes wrapping materials such as shrink wrap. (Sales and Use Tax Reg. 1589(a).) As noted in answer to question 1 above, tax does not apply to sales of nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container. (Sales and Use Tax Reg. 1589(b)(1)(A).) Therefore, BHP may issue an exemption certificate to purchase shrink wrap material and boxes into which BHP places printed materials which BHP sells together with the container. However, tax applies to the sale to BHP of shrink wrap and boxes which BHP purchases for other purposes such as for temporary storage.

“4. Bindery services only. Client brings in paper for cutting or punching for instance. Is this a taxable transaction.”

Cutting and punching the paper is a step that results in the creation of tangible personal property; hence, tax applies to those charges if the cutting and punching is for a consumer. On the other hand, tax would not apply if your sale of the fabrication is for resale or exempt such as fabrication of a periodical the sale of which is exempt under Regulation 1590.

“5. Out of state transactions ie. ordered by a company locally, printed by us but shipped directly to a location out of state. Or another location in CA with a different tax rate.”

For the purpose of answering this question, we assume that BHP has only the one business location in San Jose and is engaged in business only in Santa Clara County.

The sale of tangible personal property occurs upon transfer of title to that property from the seller to the purchaser. (Rev. & Tax. Code § 6006.) When a contract of sale is silent with respect to transfer of title, title is transferred when the seller completes its responsibilities with respect to physical delivery of the property. (UCC § 2401.) When the property is shipped to the purchaser by common carrier, the seller generally completes its responsibilities with respect to

physical delivery of the property upon tender of the property to the common carrier for shipment to the purchaser.

When a sale occurs in this state, the sales tax, if otherwise applicable, is not rendered inapplicable solely because the sale precedes a movement of the property from within this state to a point outside its borders. (Sales and Use Tax Reg. 1620(a).) However, sales tax does not apply when the property, pursuant to a contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of facilities operated by the retailer, or delivery by the retailer to a contract or common carrier or forwarding agent for shipping to such out-of-state point. (Sales and Use Tax Reg. 1620(a)(3)(B).)

If BHP is required to ship printed matter to an out-of-state point for the purchaser's use outside this state, and BHP ships or mails the printing to the out-of-state point without the purchaser's gaining possession of the property in this state, the sale is exempt from sales tax.

When the property is shipped from BHP's location in --- --- to a purchaser in Santa Clara County, the district sales tax imposed in Santa Clara County applies. Thus, the total sales tax rate is 7.75 percent. BHP owes this sales tax, and may collect reimbursement from its purchaser if the contract of sale so provides.

The rules for the application of transaction tax are similar to those established for sales in interstate commerce.

When the property is shipped from --- --- to a purchaser outside Santa Clara County pursuant to the contract of sale, the transaction is exempt from the district sales tax imposed in Santa Clara County. If the property is shipped to a purchaser outside Santa Clara County for use in a county which does not have any district taxes, then the total tax rate is 7.25%. If, however, the property is purchased for use in a county which has a district tax, that district's use tax applies.

BHP may voluntarily register to collect all district taxes imposed by districts in California. If it were to do so, it would be required to collect the applicable district use taxes for all districts imposing district taxes. (Sales and Use Tax Reg. 1827.) However, assuming it does not do so, BHP is only required to collect the applicable district use tax with respect to those districts in which it is engaged in business. This is explained in Regulation 1827, a copy of which is enclosed. Assuming that BHP is engaged in business only in Santa Clara County, it is only required to collect the district use taxes imposed by districts encompassing that county. In that case, BHP is not required to collect the district use taxes imposed in any other counties. The purchasers would, however, be liable for those additional district use taxes for purchasing the property for use in those districts.

“6. Newsletter printed quarterly, shipped by us directly to recipients at no cost to them. Taxable or not?”

As noted in answer to your question 2, sales or use tax is not imposed on the sale or use in this state of tangible personal property which becomes an ingredient or component part of a periodical that is distributed without charge and regularly issued at average intervals not exceeding three months, but not more than 60 times per year, or any such periodical. The definition of periodicals includes newsletters. (Rev. & Tax. Code § 6362.7.)

Without reviewing three consecutive issues of the newsletter, we cannot ascertain whether it qualifies as a periodical. If it so qualifies and the transaction meets the requirements established in Regulation 1590, then BHP's sale of the printing is exempt from tax.

“7. How often should or must I update resale cards?”

A resale certificate that contains a general description of property tax purchased for resale (“blanket resale certificate”) is valid until revoked in writing. (Reg. 1668(b)(2)(B).) When items are purchased which do not come within the description contained on the resale certificate on file, that certificate is not regarded as covering the sale. If the purchaser claims the purchase is for resale, BHP should obtain a new resale certificate showing that the specific items purchased were for resale.

“8. We purchase a metal die (resale) for use on job to foil or emboss. We list as separate line item on customers invoice. If we do not list separately we must pay tax on die. Is this correct?”

I assume your question is whether BHP must pay sales tax reimbursement on its purchase of the metal die if its cost is not separately stated on the customer's invoice.

As noted above, a “special printing aid” is one which is of unique utility to a particular customer and which is reusable. The metal die that you describe is a special printing aid.

When a printer purchases a special printing aid and transfers title of it to the customer prior to the printer's making any use of it, the printer may purchase the printing aid for resale to the customer. However, tax applies to the printer's retail sale to the customer of the special printing aid.

It is presumed, in the absence of evidence to the contrary, that special printing aids are sold by the printer to his or her customer prior to use if the property is separately listed and priced either upon the same sales invoice upon which the printed matter is billed or on a separate sales invoice. Special printing aids are regarded as sold prior to use, in the absence of a separate listing and pricing, only when the seller and the purchaser have, prior to the time that the special printing aid is used, explicitly agreed that title to the aid will pass to the purchaser before it is used. The intention of the parties to transfer title to the special printing aid prior to its use should

be clearly expressed in writing as a part of the contract of sale entered into by the parties prior to the use of property.

BHP satisfies the standard of proof required under Sales and Use Tax Regulation 1541 to show that it purchased a metal die for resale by listing and separately pricing the metal die item on the invoice. On the other hand, if BHP does not list the item as a separately stated amount either on the invoice for the finished product or issue a separate invoice for the sale of the metal die, BHP would not meet the standard of proof required unless BHP and its customer have clearly expressed their agreement that the title to the property passes to the customer before BHP uses it. Any such agreement should be expressed in writing. (Sales and Use tax Reg. 1541(e)(3).)

“9. On occasion we offer consulting time to clients on how best to set up files, the workings of a given software etc. No disks or copy changes hands. Taxable or not?”

Sales tax is imposed upon the sale of tangible personal property. In this case, if there is no transfer of either title or possession of tangible personal property and no fabrication is involved, the consultation is a non-taxable service.

“10. Non profit or not for profit organizations. Does tax apply any differently than for our regular customers.”

There are no exemptions from sales tax merely because the purchaser is a non-profit or not for profit organization. As provided in Regulation 1590 at subdivision (b)(5), certain sales of newspapers and periodicals to, and by, specific nonprofit organizations are exempt.

You then listed the following which you describe as your “service bureau activities.”

“1. We create a logo or graphic for client which is used on an initial printing order. Logo remains in our computer files. Is the graphic time taxable?”

If you make a taxable sale of printing, the taxable gross receipts of the sale include any part of your charge attributable to your creating a logo or graphic. On the other hand, if you make an exempt sale of printing to a client, and you create a logo or graphic to reproduce on the printed materials, your entire charge for the printing is exempt provided you do not transfer title to, or possession of, the graphic or logo to the customer.

“2. Same as above except client receives a disk with logo on it for use in his own computer.”

In this case, you transfer the logo to the customer in the form of tangible personal property. Your sale of the logo is subject to sales tax whether or not your sale of the printing is exempt.

“3. Same above but client asked for and receives a logo slick (camera ready paper they can cut up and use for art work). Taxable? Slick only? Graphics and slick?”

Your sale is a taxable sale of tangible personal property.

“4. Customer creates on art or logo and submits a disk to us. We output to paper or film for client but do no printing. He gets disk & output.”

Since you reproduce the art on an item of tangible personal property which you transfer to your client, your transfer is a sale subject to sales tax.

“5. Same above but we use paper or film for printing process.”

You are making a taxable sale of tangible personal property.

“6. Customer brings own disk, we pull up on our machine, make changes then output for client. Any difference?”

We assume you output the changed art on paper or a new disk you provide to the customer. Again, since you transfer tangible personal property to your client, tax applies to your charge.

If you have any further questions in regard to the matters contained here, please do not hesitate to write.

Sincerely,

Anthony I. Picciano
Staff Counsel

AIP:es

Encs.: Regs. 1526, 1541, 1589, 1590, 1620, 1667, 1668, 1802, and 1827 , and Rev. & Tax. Code §§ 6362.7, 6362.8 and 6364.