



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 324-2637
FAX: (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

BURTON W. OLIVER
Executive Director

August 1, 1995

Mr. P--- H---
B--- P---
XXXX --- Avenue, Suite X-X
---, CA XXXXX

Re: B--- P---
(No Permit Number)

Dear Mr. H---:

This is in response to your June 15, 1995 letter to Assistant Chief Counsel Gary Jugum regarding the application of tax on various activities undertaken by your company.

You state:

"B--- P--- [(hereafter "BP")] is engaged in the business of leasing information about businesses to other businesses for sales, marketing, research, employment, direct mail, telemarketing, and other related purposes, to sum it up, we are a business to business information provider.

"Recently, while providing a client with an estimate on an order, he informed me that if he went to one of my competitors he would not be required to pay any sales tax. I was shocked when I called my competitor and they told me that the State Board of Equalization ruled that they were exempt from paying sales tax."

We understand your letter to ask whether tax applies on the various activities undertaken by your company. In that regard, you have provided us with brochures regarding BP's operations for our review.

Discussion

We understand that BP leases both custom and non-custom business directories to its customers in addition to undertaking sales of mailing labels, printed lists, telemarketing cards, and computer diskettes. For purposes of clarity, I will first discuss the general application of tax on sales and leases of tangible personal property before addressing the application of tax on BP's leases of its business directories and sales of various materials.

General Application of Tax

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials, service, or expenses of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.)

A lease of tangible personal property in California is a continuing sale and purchase unless the lessor leases it in substantially the same form as acquired and has made a timely election to pay California sales tax reimbursement or use tax measured by the lessor's purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1, 6010(e)(5), 6010.1, Reg. 1660(c)(2).^{1/}) When the lease is a continuing sale and purchase because either or both of the foregoing conditions are not satisfied, the lease is subject to use tax measured by rentals payable. (Reg. 1660(c)(1).) The lessee owes the tax and the lessor is required to collect it from the lessee and pay it to this Board. (Rev. & Tax. Code §§ 6202, 6203, 6204; Reg. 1660(c).)

A. Leases of Business Directories

We understand from the materials you provided that BP accumulates information about other businesses in certain geographic regions for compilation into computer disks and/or reference books. BP thereafter leases these disks and books to its customers. Thus, if BP's lease of its disks and/or reference books is considered a lease of tangible personal property, tax applies to the rental receipts from these materials since BP is not leasing the property in the same form as acquired. BP would be required to collect this tax from its customers and remit it to the Board.

These types of transactions may be regarded as sales or leases of tangible personal property or instead as the providing of a non-taxable service. Where tangible personal property is furnished to a customer to transmit information that was specifically created, collected, or compiled to meet that customer's particular order, the transaction is generally regarded as a non-taxable service transaction. (See, e.g., Reg. 1501.) In that type of situation, the transfer of a

^{1/} A copy of Regulation 1660 is enclosed for your review.

single copy of the compiled information on a computer disk or paper report is considered incidental to the providing of the service and tax only applies to the sale of such materials to the seller of the service. (Id.) However, where a transaction involves the delivery of tangible personal property which includes information not customized to a customer's order (including a report previously prepared by the retailer on a custom basis), the transaction is a sale or lease of tangible personal property and is subject to tax unless an exemption otherwise applies. (Rev. & Tax. Code §§ 6051, 6201.) Information on computer disk or a paper report is generally not considered "custom" when the seller/lessor maintains an established price based on the item ordered, the product sold or leased to the customer is generic in nature (i.e., the product is available on a state or county-wide basis), or the product is delivered on a medium generally requiring mass production.

We understand from BP's brochures that it leases both pre-prepared business directories for specific geographic areas in addition to offering "customized prospecting service." We assume that the pre-prepared business directories do not constitute customized information prepared specifically to a customer's order. Your sales or leases of such directories are therefore subject to tax. You have not provided us with enough information, however, to determine whether the "customized prospecting service" qualifies as a non-taxable service. BP's "customized prospecting service" would qualify as a nontaxable service provided the amount charged reflects BP's actual charges for researching and compiling the report (e.g., the rental charge is based on BP's hourly charge to prepare the report), and the finished product is specific to that customer (i.e., the final disk/report is not sold, leased, or otherwise distributed to BP's other customers). Where BP's "customized prospecting service" does not meet these requirements, tax applies on the entire rental receipts from the lease of these reports.

B. Non-Business Directory Sales

Tax does not apply to "mailing labels" where BP addresses materials to be mailed by a customer and the names and addresses are furnished by that customer to BP or are maintained by BP on behalf of that customer. (Reg. 1502(d)(3).) We assume that BP's "printed list" is a series of names and addresses (and other information) created or maintained by BP for sale or lease to its customers for use in circulating material by mail. (See Reg. 1504(a)(1).) Tax applies on the sale or lease of these lists unless the transfer is limited to a one time use. (Regs. 1504(a)(2), 1504(a)(3).) BP's sales of telemarketing cards and computer diskettes are also subject to tax as the sale of tangible personal property unless an exemption otherwise applies. (Rev. & Tax. Code § 6051.)

Finally, you state that your competitor believes it is not required to pay tax on its sales to customers. You have not, however, provided us with enough information to determine whether your competitor's activities are in fact subject to tax or whether an exemption from tax may apply. We note, however, that we are precluded from divulging certain information about taxpayers to others. (Rev. & Tax. Code § 7056.) As such, we would likely be unable to comment on your competitor's operations even if you provided us with a comprehensive

description of its operations. (We would, of course, take efforts to ensure that your competitor is properly reporting tax on its non-exempt sales to customers.)

We trust this answers your questions. If you have any further questions, please write again. If you do so, please provide us with a step by step description of the particular transactions and the particular products BP will be providing to its customers. Finally, we have been unable to locate a seller's permit number for Business Prospector. Please contact me or my secretary with the seller's permit number so that this letter can be filed appropriately.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:cl
Enclosure - Reg. 1660

cc: Sacramento District Administrator