



STATE BOARD OF EQUALIZATION

(916) 324-8208

March 26, 1992

Dear REDACTED TEXT,

This is in response to your letter which was received by the Board of Equalization on January 2, 1992. In your letter you state:

“...REDACTED TEXT is a pre-employment personnel screening service.... The service will consist of creating combination reports on an individual as requested by the customer. Each service will be specifically generated one time only by a service request. For instance, if a business is looking to hire an individual they may wish to run a background check. REDACTED TEXT would at the customers request create a report consisting of a Drivers License report, a Consumer Credit Summary report, and a Workers Compensation Claim report. For each request REDACTED TEXT will access the REDACTED TEXT on-line computer information system and retrieve necessary reports. We would then fax those reports to the customer with an invoice. Each request must be accompanied by any requisite information release signatures as required by REDACTED TEXT and the Fair Credit Reporting Act. The service would be provided only once per request. REDACTED TEXT is not and will not be a credit reporting business, we will provide background information reports as requested.”

You enclosed with your letter a document entitled “REDACTED TEXT” which describes the type of reports available. You ask whether providing the reports is a service or a sale of a product subject to sales tax.

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. To be subject to sales tax, a transaction must be a sale which 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.

If the true object of a contract is for the service of researching and developing original information for a customer, tax does not apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.

It appears from your letter that you are not selling prepared or "canned" reports to your customers. Rather, all reports will be researched and prepared separately on a request by request basis and will contain information unique to a particular customer's request. If that is the case, your charges for such reports are not taxable. Note, however, that after the completion of the contract, if a customer requests additional copies of the report previously provided to him under the contract, the charges for the additional reports are taxable. BTLG, Sales and Use Tax Annotation 515.0380. If you will be selling additional copies of reports, you will be regarded as a seller of tangible personal property and must obtain a seller's permit from the Board. Rev. & Tax. Code §§ 6014 and 6066.

With respect to those reports that are faxed to the customer (as opposed to those which are mailed or physically delivered in some other manner), charges for such reports are not taxable even if the reports are not part of a service because a transfer of information by telephone lines is not considered a sale of tangible personal property.

Even though your charges for your reports may not be taxable, your business is the consumer of the tangible personal property (such as paper, ink, envelopes etc.) which it uses incidentally to provide the service. Therefore, tax applies to the sale of such property to your business, and you may not give the seller a resale certificate.

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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