



STATE BOARD OF EQUALIZATION

October 28, 1969

Attention: REDACTED TEXT

Gentlemen:

This is in reply to your letter of October 13, 1969, in which you request our opinion as to the application of the sales tax to the activities of your client, who intends to engaged in the business of providing horoscopes.

We understand that the customer provides information concerning his date, time, and place of birth to the company, and the company in turn delivers to the customer approximately twenty pages of information concerning the customer.

In our opinion your client's services are not subject to the sales tax.

The sales tax applies to the gross receipts from the retail sale of tangible personal property, whereas persons in the business of rendering services are consumers, not retailers, of any tangible personal property which they use incidentally in rendering the service.

The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true object of the contract; that is, is the real object sought by the buyer the service per se or the property produced by the service?

Persons in the business of providing horoscopes would seem, under the criteria set forth above, to be engaged in the performance of a service since (1) the customer's primary interest would be the contents of the horoscope and not the horoscope as a written object of property, (2) the horoscope would be prepared on an individual basis, and (3) the charge for the horoscope would probably not vary with the number of pages provided the customer.

We note that if the horoscopes were sold as mere stock items, their sale might well be subject to tax.

Very truly yours,

Gary J. Jugum
Assistant Tax Counsel

GJJ:ph

bc: REDACTED TEXT – District Administrator
Headquarters – Audit Evaluation and Planning (HR)