


**STATE BOARD OF EQUALIZATION**

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*Executive Director*

November 25, 1996

REDACTED TEXT

Re: Unidentified Taxpayer

Dear REDACTED TEXT,

This is in response to your letter of October 4, 1996, in which you ask for information regarding application of sales tax to "special printing aids" used to produce printed sales messages and newspaper inserts. You provided the following facts:

An out-of-state retailer who has stores in California and other states hires a California lithographer to produce color separations. The lithographer sends hard copy proofs to the retailer out of state for approval. The retailer may make changes or not, but returns all the proofs after approval. After receipt of the approved proof, the lithographer sends the color separation to a California printer. The printer uses the color separation to print either direct mail advertising material which qualifies as printed sales messages under Regulation 1541.5, or inserts which are placed into newspapers as defined in Regulation 1590(a) (1). The inserts are shipped by the printer both to newspapers within and out of California. The "printed sales messages" are sent free of charge by a California mailing house to individuals both inside and outside the state of California.

You believe the inserts meet the definition of being an ingredient or component part of the newspapers. You also believe that the true object of the contract between the retailer and lithographer is the service provided by the lithographer.

You provided us with a listing of charges which are issued by the lithographer to the retailer as follows:

	<u>"Quantity</u>	<u>Description</u>	<u>Amount</u>
A)	1	Retouching – 10 minutes	\$80.00
B)	1	Simple Outline	25.00
C)	22	Image Inputs - \$45.00 Ea.	990.00
D)	12	Pick Up Images - \$35.00 Ea.	420.00
E)	6	System Assembly Time - \$200.00 per Hr.	1,200.00
F)	4	Film with Hardcopy Proof - \$425.00 Ea.	1,700.00
G)	4	Blueline Proofs - \$5.00 Ea.	20.00
H)	1	Common 4/Color Change – UT, OR, AZ, CA	450.00
I)	1	Ship Final Film to Printer	75.00

“Charges identified above are as follows:

1. A through E are lithographic process services
2. Charge F is a combination charge for the film and hardcopy proof. The hardcopy proof being supplied here to the retailer is for color inspection and is sent back to the lithographer. The retailer never receives the film.
3. Charge G is a charge for a blueline proof only which is being supplied to inspect print quality and is returned to the lithographer.
4. Charge H is self-explanatory.”

Sales tax is imposed on a retailer's sales of tangible personal property at retail in California unless there is a statutory exemption. (Rev. & Tax. Code § 6051.) The retailer's gross receipts are used to determine the amount of the sales tax. "Gross receipts" is the total sales price charged by the retailer for the sale of tangible personal property in California. (Rev. & Tax. Code § 6012.) Sales tax does not apply to charges for services which themselves do not constitute sales of tangible personal property and which are not part of the sale of tangible personal property. The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property which is incidental to the performance of the 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? If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred. When a transaction is regarded as a sale of tangible personal property, tax applies to the gross receipts from the furnishing of that tangible personal property without any deduction on account of the work, labor, skill, thought, time spent, or other expense producing the property. (Sales & Use Tax. Reg. 1501.)

We do not agree with your conclusion that the true object of the retailer's contract with the lithographer is the provision of a service since the retailer specifically desires tangible personal property, that is, satisfactory color separations to use for printing newspaper inserts and printed sales messages. Hence, the lithographer makes a taxable sale of the color separations to the retailer. The lithographer may collect sales tax reimbursement from the retailer if the contract so provides. (Civ. Code § 1656.1.)

The lithographer is not providing a mere service, but rather is selling tangible personal property. Its entire charges for that tangible personal property are subject to tax unless specifically excluded by statute. (Rev. & Tax. Code § 6012.) Thus, the charges listed as A through H on the lithographer's invoice are subject to tax.

We assume that the lithographer sends the color separations to the printer by United States mail or other common carrier. Generally, tax does not apply to separately stated charges for such transportation from the retailer's place of business or other point from which the shipment is made directly to the purchaser or in this case the purchaser's agent. Only that portion of the separately stated charge which represents the retailer's actual cost of shipment may be excluded from the measure of tax; the portion that exceeds the actual cost of shipping is subject

to tax. (Sales and Use Tax Reg. 1628(a).) Thus, that portion of Item I which is the amount paid by the lithographer for postage is not subject to tax since it is a separately stated transportation charge that meets the requirements above stated. That portion of the transportation charge that exceeds the cost of mailing, if any, is subject to tax.

In light of our conclusion that the lithographer's sale is subject to tax, you inquire as to the definition of special printing aid in subdivision (e) of Regulation 1541. That provision explains when a printer may purchase special printing aids for resale. Since the lithographer here is making a sale of property to the consumer, this provision is not relevant.

This opinion does not come within the purview of Revenue and Taxation Code 6596 (copy enclosed) since you have not identified your client.

If you have any further questions in regard to the matters contained herein, please do not hesitate to write again providing us with facts specific to each transaction.

Yours very truly,

Anthony I. Picciano  
Tax Counsel

AIP:cl

REDACTED TEXT

Enclosures (2)

cc: REDACTED TEXT District Administrator