

**STATE BOARD OF EQUALIZATION**

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January 27, 1994

REDACTED TEXT

Dear REDACTED TEXT,

This is in response to your letter dated December 3, 1993, which is a follow-up to the letter you wrote to us on September 22, 1993 and to which we responded on November 18, 1993. You ask how tax applies to membership fees.

You state that REDACTED TEXT provides easy access to a wide range of nontaxable services. It also provides its members canned software. You state the canned software is not provided to each member because it is only beneficial to some of the members. You also state the retail price of the software is \$179; you purchase it for \$49 and sell it to your members for the same price, included in the membership fee of \$650. According to the membership application, the annual membership fee is \$500 and the one-time administrative fee is \$150. The contract does not separately state a fee for software and does not discount the price by \$49 if the member declines the software. In fact, the contract does not give the member that option.

You further state that the canned software is not related in any way to the other services. You provide the following list of providers which you make available to your customers:

"1) A business Health Index Survey 2) Business Expense Audit 3) Marketing Consultants 4) Accountants 5) Research Directors 6) Computer Technicians 7) Sales Manager 8) Financial Analysts 9) Telecommunications Experts 10) Attorneys 11) Operations Managers 12) Management Consultants 13) Numerous other expert consultants 14) Group Health Insurance 15) Discounted Phone Service 16) Retirement plans 17) Employee Incentives 18) Seminars 19) Teleconferences 20) Workshops."

As explained in my previous letter, the question is whether you are providing property incidental to a service (which is not taxable) or whether the membership fees are for the sale of tangible personal property or relate to anticipated retail sales of tangible personal property (which is taxable) .

The contract provides that members are entitled to receive, among other things, "specially priced products" from REDACTED TEXT. For purposes of this opinion, I assume that REDACTED TEXT is unrelated to the REDACTED TEXT and that REDACTED TEXT receives no commission or other compensation with respect to sales made by REDACTED TEXT to REDACTED TEXT members.

Although you state that the only tangible personal property provided to your members is the software, the membership application indicates that you also provide a Business Health Index Survey, a Solutions Report, a Business Expense Audit, and a quarterly Newsletter. These all appear to be tangible personal property. There is an exemption application to the newsletter (Rev. and Tax. Code § 6367), but if you are regarded as selling the other items, the sale is subject to tax. You have not described these items but for purposes of this opinion, I assume that their value is minimal, and that, as you assert, your members join REDACTED TEXT for access to professional services.

Under the specific facts and assumptions stated herein, we conclude that your membership fees are not taxable and that you are the consumer of all the tangible personal property provided to your members. As such, tax applies to the sale to you of such property. Please note that if my assumptions are incorrect, our opinion would be different.

Sincerely,

Rachel M. Aragon
Staff Counsel

RMA:ljt

bc: REDACTED TEXT – District Administrator