

(916) 445-6450

April 20, 1988

REDACTED TEXT

Dear REDACTED TEXT,

This is in reply to your March 1, 1988 letter in which you request an opinion on behalf of REDACTED TEXT, regarding the application of sales tax to REDACTED TEXT charge for its Prescreen Service.

As stated in the Declaration of REDACTED TEXT dated December 14, 1987, which accompanied your letter, REDACTED TEXT Prescreen Service generally involves an evaluation of persons who are credit candidates based upon agreed upon credit criteria. The names are evaluated based upon data contained in REDACTED TEXT's existing data base of credit information. Essentially, REDACTED TEXT uses the following steps in performing its Prescreen Service:

- “(a) Selection of a demographically based list of possible credit candidates. This list may contain median income for that area and other data.
- “(b) REDACTED TEXT employees work with the credit grantor (such as a bank) to establish a set of appropriate credit criteria.
- “(c) A list containing the abbreviated names and addresses of the possible credit candidates is sent to REDACTED TEXT.
- “(d) REDACTED TEXT after several preliminary steps, including preparation of an individualized computer program, evaluates the names on that list based upon its pre-existing bank of credit information.
- “(e) REDACTED TEXT prepares a revised list of names which pass the credit grantor's set of credit criteria.
- “(f) The new list of qualified credit candidates is then forwarded to another company or, depending upon the type of solicitation, back to the bank (or other credit grantor). That company then prepares the formal solicitation of qualified credit candidates. The actual solicitation is done by mail, telephone, or both.

“The initial group of names received by REDACTED TEXT California office is printed on a magnetic tape. During the Prescreen, that magnetic tape is processed as follows:

“(a) The initial magnetic tape (the ‘user tape’) is tested. The list is alphabetized and errors are eliminated.

“(b) The alphabetized list is put on a REDACTED TEXT magnetic tape.

“(c) Using the REDACTED TEXT magnetic tape, REDACTED TEXT evaluates the names by comparing it with its existing data base.

“(d) Two tapes are then made. One is a ‘rated tape’ with the list of all names which pass the credit criteria. The other ‘reject tape’ contains the list of names which did not pass the credit criteria.

“(e) The rated tape is then sent to the company which will prepare the actual credit solicitation. The reject tape is retained by REDACTED TEXT for quality control purposes.”

On the basis of our review of your letter and of the Order of Judgment dated February 11, 1988 in the case, TRW Inc. v. California State Board of Equalization, C455055, it is our opinion that REDACTED TEXT’s transfer of magnetic tapes as part of its Prescreen Service is incidental to the provisions of a service to the credit grantors. The transfer of magnetic tapes is not the true object of the contract between REDACTED TEXT and the credit grantors. Accordingly, sales tax does not apply to REDACTED TEXT’s charge to the credit grantors for the Prescreen Service. Sales tax applies to the sale to REDACTED TEXT of magnetic tapes and other tangible personal property which REDACTED TEXT consumes in performing the Prescreen Service, including the magnetic tapes which REDACTED TEXT transfers incidental to the service.

We hope this answers your question; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

bc: REDACTED TEXT District Administrator

Pre-Screen Credit Service. A firm evaluates persons for credit for clients by using data in an existing data base. The following steps are involved:

- (1) Selection of a demographically based list of possible credit candidates.
- (2) The firm and the client develop a set of appropriate credit criteria.
- (3) A list of potential candidates is sent to the firm by the client.
- (4) The firm prepares an individualized computer program and evaluates the names based upon the credit criteria developed in (2) above.
- (5) A list of those who meet the criteria is developed.
- (6) The list is sent to the client or its designee for use in solicitation. In developing a list, two magnetic tapes are prepared. One with those persons who meet the credit criteria and one which contains the names of the persons who did not meet the credit criteria.

The transfer of the magnetic tape to the client is incidental to the service performed by the firm. Tax applies to the sale of the tape to the firm and the charge to the client is a nontaxable service.
INSERT (A) 4/20/88

(A) This is because the firm extracted information from an existing database to the special order of its client and did not merely repeatedly sell data base information.

Questionable: if we can't add (A) to this anno. Because its not part of the backup letter, it won't be understandable why some database transactions are sales and some are services.

John Abbott
7/26/94