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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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October 30, 1995

Dear REDACTED TEXT,

This is in response to your letter dated September 27, 1995 asking how tax applies to certain sales activities undertaken by REDACTED TEXT.

You state:

“Our company runs a test on film called a Methaline Blue Test. The customer send us a sample piece of film which they have already processed. We then run the above test to check for any residue that might be left on their film (due to processing). This test lets them know the longevity of their film. We send them the results of [the] test.”

Discussion

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.) The term “sale” means any transfer of title or possession of tangible personal property for consideration. (Rev. & Tax. Code § 6006(a).) A sale at retail means a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.)

Neither the sales nor the use tax applies to charges for services not constituting sales of tangible personal property. (Reg. 1501 (copy enclosed).) Whether a particular transaction involves a sale of tangible personal property or instead involves the transfer of tangible personal property incidental to the performance of a service depends upon 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. (Id.) If the true object of the contract is the performance of a service, the transaction is not subject to sales or use tax. Persons engaged in the business of rendering services are consumers, not retailers, of the tangible personal property they transfer incidentally in rendering the service. (Id.) Tax applies to the sale of the property to those persons or to their use of that property. (Id.) However, if the true object of the contract is the procurement of the tangible personal property, the transfer of such property to the customer is regarded as a sale of tangible personal property subject to tax.

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You have not provided sufficient information for us to provide you with a definitive answer on whether the activities you describe constitute sales of tangible personal property. You explain that REDACTED TEXT sends its customers the results of the Methaline Blue Test performed on a sample piece of film provided by the customer. If all REDACTED TEXT transfers to its customers is a written report¹ analyzing the results of Methaline Blue Test, we regard REDACTED TEXT as providing a nontaxable service. The transfer of the written reports to its customers is incidental to the service provided by REDACTED TEXT (Reg. 1501.) This means that REDACTED TEXT is the consumer of the tangible personal property (i.e., paper) it transfers incidentally in rendering the service. Tax applies to the sale of the property to REDACTED TEXT or to its use of that property. On the other hand, if REDACTED TEXT transfers any other tangible personal property to its customers, such transfer would probably be regarded as a retail sale of tangible personal property subject to tax.

If you have any further questions, please write again. If you do so, please provide a detailed description of each step involved in the activity about which you inquire, including a complete description of what is provided to your customers, along with copies of any contracts relevant to your inquiry.

Sincerely,

Sophia H. Chung
Staff Counsel

SHC:rz

¹ We assume that the written report consists of text only and contains no photographs, drawings or diagrams.