

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

November 6, 1990

Ms. D--- C. L---
Production Manager
The E--- A---, Inc.
XXXX --- Street, Suite XXX
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Ms. L---:

This is in response to your letter dated September 21, 1990. You design, plan, and coordinate parties and special events which involve sales of tangible personal property.

Before answering your specific questions, a general discussion of the application of tax to the business of caterers is appropriate. A caterer is a person who serves meals, food, and drinks on the premises of her customers or on premises supplied by the customers. Tax applies to the entire charge made by caterers for serving meals, food, and drinks, including all charges for food, use of dishes, silverware, glasses, chairs, and tables used in conjunction with serving meals, as well as the charge for the labor of serving the meals, whether performed by the caterer or by the caterer's employees or subcontractors. (Reg. 1603(h).)

A caterer cannot issue a resale certificate for the purchase or lease of items it uses in its catering, such as dishes, silverware, glasses, chairs and tables because the caterer does not sell or rent such items to its customers. Rather, the caterer uses these items in connection with its sale of the meals. On the other hand, a caterer may issue a resale certificate to a rental company to lease tangible personal property which the caterer does not use itself but rather subleases to its clients when the clients have specifically ordered such property and the property is not customarily provided in connection with the preparation of food. (In such cases, the caterer would be required to collect use tax from the client measured by rentals payable.) Such property might be lighting for guest speakers, sound systems, or video systems.

When a caterer contracts with the owner of a location for the use of that location by the caterer in which to serve food to its customers, the caterer is considered the equivalent of a restaurant serving food, as opposed to a caterer serving food in a client's facility. Just as a restaurant cannot deduct an amount attributable to overhead costs of the restaurant facility, even if

separately stated, the caterer who operates in a manner equivalent to a restaurant may not deduct the overhead costs for the facilities even if separately stated. Also, since the caterer controls the facilities, it is not renting props, costumes, displays, or flowers to the customer for that event and therefore may not purchase or lease such items for resale. However, when the facility in which the food service occurs is mobile, such as a yacht or bus, a charge for transportation is excludable from your measure of tax.

Our response to each of your questions is set forth below. When I conclude that a certain charge is not subject to tax, please note that it is based on the assumption that you do not require your customers to purchase the service to which that charge relates in order to obtain the tangible personal property that you sell (such as meals). Also, you have not specified whether your activities will be at locations owned or arranged by your customer or at locations which you arrange. For purposes of this opinion, we assume that you have arranged for the facilities at which the events will occur. Therefore, we analyze your questions as if you were a restaurant.

In your first question, you ask whether all marked-up items require sales tax and you list a number of items. Your charges for the items you characterize as rentals are subject to sales tax when those items are used in connection with your preparation and furnishing of food. This would include the tables and chairs at which people sit to eat their meals and any props that are used to decorate the eating area. The charge for items you characterize as rentals which are not related to the service and preparation of food, such as staging for entertainment, are not subject to sales tax. However, you may not purchase or lease such items for resale to your customers since you are not actually renting them to your customers. The charge for decorating the food buffets is subject to tax as are your charges for site décor as relates to the food service area. Your charge for decorating the entertainment stage and your charge for entertainment are not subject to sales tax. Your charges for labor are subject to sales tax when that labor relates to your service or preparation of food. Thus, your charges for the wait staff are subject to sale tax as are our charges for site managers and administrative personnel if those charges relate to your taxable sales of tangible personal property such as meals. Your charge for stage hands is not subject to sales tax.

Your charge for the production costs of the entertainment is not subject to sales tax. Your charge for catering, including food, plastics, beverages, and staffing, is entirely subject to sales tax. Your charge for invitations and calligraphy is subject to sales tax. Your charge for miscellaneous supplies as it relates to your providing of meals is subject to sales tax. Your charge for freight is subject to sales tax when the freight relates to your sales of tangible personal property (such as your shipment of food, decor, and other items used for service or preparation of food). We do not have sufficient information to advise you with respect to your charge for messenger service. If it relates to your sales of tangible personal property, your charge is taxable. Your charge for photography and video coverage is subject to sales tax. We assume the promotional materials about which you inquire are items of tangible personal property you provide pursuant to your customer's request. Your charge for these items is subject to sales tax.

“2. Do administrative fees that are charged to client require sales tax?

- “A. Phone
- “B. Freight
- “C. Travel (for entertainers, staff, management)
- “D. Postage
- “E. Insurance (Liability per event)
- “F. Accommodations (for entertainment, staff, management)
- “G. Temporary office equipment rentals
- “H. Administrative personnel”

When these charges relate to your sales of tangible personal property, they are subject to sales tax. Otherwise, they are not. For example, your charge for accommodations of staff who will serve meals must be included in the measure of tax for your sale of those meals. Your charge for accommodations of the entertainment staff is not subject to sales tax since the providing of entertainment is not the sale of tangible personal property.

“3. Are costume rentals for entertainers taxable?”

We assume you mean your charge for costume rentals which you pass on to your customers and not the amounts your costume suppliers charge you for supplying the costumes. Your charge is not subject to tax. (Your costume supplier’s charge may be subject to tax.)

“4. Are prop rentals for decor taxable? We sometimes design and build custom props and rent them to our client, we then return them to our stock. Other times we rent props from outside sources and bill our client at a marked up rate. All custom props are pre-built prior to the event and then installed by manual laborers.”

Since you are providing these items in your own facilities (that is, facilities that you rent on your own behalf or your own facilities), you are not leasing them to your customers. When you build the props yourself, you may not purchase the materials ex tax. When you rent the props from outside sources, you are the consumer of those props and tax may apply to your supplier’s charge. The charge to your customer is taxable if related to your sales of meals (e.g., props for decorating the food service area). If unrelated to your sales of meals or other sales of tangible personal property, your charge is not taxable.

“5. Is entertainment taxable?

- “A. Musicians
- “B. Actors
- “C. Assistants
- “D. Stage hands
- “E. Stage managers

- “F. Directors
- “G. Ushers
- “H. Security”

No.

“6. If we purchase one time Liability Insurance for a specific event and charge our client for it at a marked up price, is it taxable?”

Since related to your taxable sales of tangible personal property (meals), this charge is subject to sales tax as part of your overhead costs of selling those items.

[No paragraph 7.]

“8. If we charge our client a professional fee for designing and coordination an event, then invoice them separately for materials, are we required to charge sales tax on our professional fee?”

We do not have sufficient information to answer this question. Charges for design are not subject to sales tax when they are unrelated to the sale of tangible personal property. We are not certain what materials you are separately invoicing. Based on our assumptions above, you are not renting props to your customers because you are using them in your own facilities. It is also not clear whether this amount relates to your planning with respect to your sales of tangible personal property such as sales of meals. Charges attributable to such planning would be subject to sales tax.

“9. If we provide consulting services to a client regarding a party or event, is sales tax required?”

If your consulting is unrelated to any sales of tangible personal property, your charges are not subject to sales tax.

[No paragraph 10.]

“11. If we provide our client with an entertainment production package which includes: entertainers, costumes, staging, sound systems, lighting, special effects, stage managers, stage hands and seating are we required to charge sales tax?”

Your charge for optional entertainment is not subject to sales tax. Assuming that the lighting and seating are not the same as used with respect to your sales of meals or other tangible personal property, these charges are not subject to sales tax.

“12. Are Party Favor Giveaway Gifts taxable?”

- “A. Balloons

- “B. Candy
- “C. Hats
- “D. Plaques”

Your charges for these items are subject to sales tax.

“13. Is Valet Parking Taxable?”

No.

“14. What Equipment rentals are taxable? For instance, --- --- does not charge sales tax on their rentals. Some rental companies do charge tax. How do we handle this in billing? Some rentals we plan to use for catering and some we use for entertainment production. Am I to understand that any and all rentals for catering are taxable? All rentals associated with entertainment are not taxable?”

A rental of tangible personal property is a sale, and is subject to tax, unless the property is leased in substantially the same form as acquired by the lessor and the lessor (or sublessor) has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property. Thus, when the lessor leases the property in the same form as acquired (that is, the lessor is not the manufacturer or producer of the rented item), the lessor may choose to pay tax on the purchase price or collect use tax measured by the rentals payable. (This is discussed in Regulation 1660, a copy of which is enclosed.) Apparently, --- --- has chosen to pay tax on the purchase price of their items. Presumably, their rental charges are slightly higher (offset by no tax being collected from the lessee) than a lessor who collects use tax on rentals since ---'s costs for that equipment are higher by virtue of its payment of sales tax on purchase price.

As discussed above, when you are in control of the facilities at which the event occurs, you are not actually renting anything to your customers. Rather, you are the consumer of all items you characterize as rentals. Since you will not be reselling (by renting) these items to your customers, you may not purchase them ex tax by issuing resale certificates. The charges for items characterized as rentals which are attributable to your sales of tangible personal property may not be deducted from your taxable gross receipts. The charges for items characterized as rentals which you use to provide nontaxable entertainment are not taxable because they are not related to the sale of tangible personal property and they are not actually rentals.

“15. How should we categorize our invoices for taxable and non-taxable items that would best suit State Board of Equalization?”

We, of course, prefer that you charge items which are subject to sales tax separately from items which are not subject to sales tax. If you wish more assistance on this point, please contact Mr. J--- S---, Audit Supervisor of our San Francisco District office. He may be reached at (415) 396-9800.

“16. Are hotel accommodations for staff and entertainers taxable to us or our clients?”

Please see our response to your question 2.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:wk
2560C

cc: Mr. J--- S---, --- --- District Office

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1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
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December 12, 1990

Ms. D--- C. L---
Production Manager
The E--- A---, Inc.
XXXX --- Street, Suite XXX
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Ms. L---:

In a letter dated November 6, 1990, I responded to a previous letter from you regarding the application of sales tax to your business of catering. That letter was based on the assumption that you contracted with the owner of a location for use of that location in which to serve food to your customers, making you the equivalent for sales tax purposes to a restaurant serving food.

In a letter dated November 14, 1990, you note that most of the events you produce take place on your client's property and you ask whether this would change your tax liability. In my previous letter, I responded to your questions 1 through 16, except for questions 7 and 10 which were omitted from your letter. The answers to those questions remain applicable when the events take place on your client's property except as specifically note below.

Initially, I wish to correct your misconception regarding the nature of your business. You state that you do not consider yourself a caterer since you subcontract that portion of the event out. However, you note that the caterer invoices you and you then mark up that cost and bill your client. (You also note that sometimes you have the caterer bill your client directly.) The retail sale in this situation is the sale to your client. You are the person contracting with your client for that sale and you are therefore the retail caterer with respect to that sale. The caterer that you have hired makes a sale to you for resale to your client. You should issue the caterer a resale certificate in the form set out in Regulation 1668, a copy of which is enclosed. Since you are making the retail sale, sales tax applies to your charge. The same analysis applies to your nonfood retail sales.

In you first question, you ask whether a number of marked up items require sales tax on your charges. As stated previously, your charges for the items used in connection with your preparation and furnishing of food must be included in your measure of sales tax. When the event occurs on the property of your clients, some of the items that you characterize as rentals which are

not related to the service and preparation of food will be regarded as rented to your clients. These are items with respect to which possession and control are transferred to your clients, such as staging and decoration of the staging area. (As discussed in my previous letter, when the event occurs on your property or on property whose use you have contracted, you are not regarded as transferring possession and control of these items and you are not therefore regarded as renting these items to your client.)

My understanding is that you normally rent these from another person for sublease to your clients. If your lessor is leasing the property to you in a transaction that is not regarded as a sale (as discussed in my previous letter), then your sublease will also not be regarded as a sale and your charge will not be subject to tax. (Reg. 1660(c)(5).) Further, if your lessor charges you tax on your rental, your sublease to your client is not regarded as a sale and your charge is not subject to tax. (Id.) However, if your lessor does not charge you tax on your rental because you choose to issue your lessor a resale certificate, which you may do if the transaction with your client constitutes a rental, your sublease to your client will be the transaction regarded as a sale and your charge for that sale will be subject to tax.

The application of tax to your charges for items with respect to which you do not transfer possession and control to your clients, such as costumes for your performers, remains as discussed in my previous letter, that is, you may not purchase or lease those items for resale.

Your fourth question is whether prop rentals for décor are taxable. You state that you sometimes design and build custom props for rental to your client and then return them to your stock. Other times you rent props from outside sources. When these props are related to your service and preparation of food, such as decoration of the food service area, you are regarded as the consumer of those items and you may not purchase or rent the property ex tax for resale. Your charge to your client may not be deducted from you taxable gross receipts.

Since these transactions will occur on the premises of your clients, the transfer of possession and control of items unrelated to the preparation and service of food will be regarded as rentals. A rental of tangible personal property is regarded as a continuing sale and is subject to use tax measured by rentals payable, unless the property is leased in substantially the same form as acquired and tax is timely paid measured by purchase price. With respect to the props that you design and build, you are not renting them in substantially the same form as acquired. Your rentals of those items therefore are continuing sales and the rental charges are subject to tax. You may purchase ex tax for resale the property which you incorporate into these props without prior use. When you rent props from outside sources, the rules discussed above with respect to your first question (regarding transactions we regard as true-rentals) apply.

Your question 11 relates to your charges for entertainment, which include entertainers, costumes, staging, etc. As stated previously, your charge for optional entertainment is not subject to sales tax. As also mentioned previously, you are not regarded as renting the costumes since your clients do not gain possession or control. I had stated previously that if your lighting and seating are not the same as used with respect to sales of meals or other tangible personal property, the charges

for those items would not be subject to sales tax. (Under such circumstances, you are the consumer and may not purchase or lease the items ex tax for resale. Since you are not selling the items and you are not regarded as using them in connection with the sale of tangible personal property, that is, meals, your charge is not part of the sale of tangible personal property and is not subject to sales tax.) When the activity occurs on the property of your client, we will regard you as renting those items to your client and tax will apply as discussed above (if tax has been paid previously measured by purchase price or on a previous lease such as your lease from a rental company, your charges will not be subject to tax; otherwise your charges will be subject to tax).

The questions that you omitted from your previous letter were questions 7 and 10. Your question 7 relates to your charges for staging, props, etc. Your question 10 is whether you are still considered the consumer of rentals when you are using your client's facilities. I believe that the discussion above and the discussion in my previous letter answer both these questions. If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:wak
2652C

Enclosure

bc: --- --- District Administrator