



STATE BOARD OF EQUALIZATION

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April 19, 1996

Mr. D--- L. T---
C--- & L--- L---
XXX --- Street
--- ---, California XXXXX-XXXX

Re: Unidentified Taxpayer

Dear Mr. T---:

This is in response to your letter dated March 13, 1996 to Supervising Staff Counsel Ronald L. Dick regarding the application of tax on certain Internet transactions undertaken by an unidentified taxpayer (hereafter "Net").

You state that Net engages in the following activities on the World Wide Web:

"⇒Net collects résumés at no cost from job fairs, the Internet and a variety of other sources for which no sales or use tax has been paid.

"⇒Net gives customers access to a database of these résumés in order for them to conduct searches for potential employees based on job requirements.

"⇒Net charges an access fee for the database search and a subscription fee based on the quantity of résumés (name and address) viewed.

"⇒Currently, Net pays sales tax on purchases of consumables, supplies, and equipment. Net does not have a seller's permit and does not collect sales tax from its customers for the previously described transactions."

You ask whether it "is necessary for Net to collect sales tax from its customers for either providing access to the résumé database and/or for viewing any résumés on line."

E. L. Sorensen, Jr.
Executive Director

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempted from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use or other consumption of that property in California. (Rev. & Tax. Code §§ 6201, 6401.) A lease of tangible personal property in California is a continuing sale and purchase unless the lessor leases it in substantially the same form as acquired and has made a timely election to pay California sales tax reimbursement or use tax measured by the lessor's purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1, 6010(e)(5), 6010.1, Reg. 1660(c)(2).) When the lease is a continuing sale and purchase because either or both of the foregoing conditions are not satisfied, the lease is subject to use tax measured by rentals payable. (Reg. 1660(c)(1).) The lessee owes the tax and the lessor is required to collect it from the lessee and pay it to this Board. (Rev. & Tax. Code §§ 6202, 6203, 6204; Reg. 1660(c).)

We understand from your letter that Net does not sell or lease any tangible personal property to its customers in the course of providing access to its résumé data base. That is, we assume that Net does not sell or lease to its customers any of the computer equipment or software necessary to access its database nor provide copies of any of the information from its database to its customers in tangible form. Rather, our understanding is that Net's customers access from their own computers via the Internet Net's data base which is maintained on computers solely within the possession and control of Net. (If our assumptions are incorrect, our answer would be different.) Under these facts, tax does not apply to Net's subscription charge or access fee to its customers for viewing its résumé database since it is not selling or leasing any tangible personal property.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:rz

cc: --- --- District Administrator - (--)