STATE OF CALIFORNIA

120.1175

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
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(916) 324-2642

April 29, 1994

Mr. C--- R---, President
R--- D--- S---, Inc.
XXX --- ---
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. R---:

This is in response to your letter dated March 15, 1994, in which you inquire about the application of sales tax to data entry services. You state that:

> "In Regulation 1502, paragraph (d)(2) of the State Sales and Use Tax Regulations, we read that charges for data entry and verification '...are taxable, whether the storage media are furnished by the customer or the data processing firm.' Elsewhere in the same regulation, we read that it 'is not a taxable transaction if the program (data?) is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer and the purchaser does not obtain possession of any tangible personal property such as storage media in the transaction.'
>
> "Please inform us whether tax is applicable when the data which has been key entered and verified is transmitted by remote telecommunications to our client's computer. We understand that charges are taxable if the data is returned on storage media, such as magnetic diskette or tape, whether that media has been supplied by the customer or the data processing firm.
>
> "We further need to know if charges for sales tax need to be itemized separately on our invoice to the client, or may we simply embed them in the over-all price and extract the tax for payment at the end of the fiscal quarter."

When data has been key entered, verified, and is transferred by remote telecommunication from the seller's place of business to the purchaser's computer (modem to modem), and no personal property is transferred, the transaction is not regarded as a sale of tangible personal property. (See Reg. 1502(f)(1)(D).) Since the transaction is not a sale of tangible personal property, no tax applies. As you note, however, if the customer receives the data on storage media, the transfer of that storage media is a sale subject to sales tax. This is true even if the customer provides the blank storage media on which to write the data. (See Reg. 1502(d)(2).)

You also ask whether sales tax must be separately itemized to your clients. The sales tax is imposed on the retailer of tangible personal property, not the purchaser. (Rev. & Tax. Code § 6051.) The retailer may collect reimbursement for its sales tax liability from the purchaser if their contract of sale so provides. (Civ. Code § 1651.1.) Even though such amounts are sales tax reimbursement, they are commonly itemized as "sales tax."

There is no requirement that the retailer collect any sales tax reimbursement from the customer. Whether the retailer collects reimbursement or not, the retailer owes tax measured by its gross receipts from the sale. Except as explained below, if you do not itemize the sales tax (reimbursement) separately from your other charges, the entire amount you receive from your customer will be regarded as your taxable gross receipts, with no deduction for any "sales tax"or sales tax reimbursement collected from your customer. Subdivision (a)(2) of Regulation 1700, a copy of which is enclosed, explains when the retailer is regarded as selling the property on a "tax included" basis. If your contracts satisfy these requirements, you will not have to separately itemize sales tax reimbursement and will, nevertheless, be able to deduct such sales tax reimbursement in order to determine your gross receipts (commonly referred to as "backing out the tax").

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

Sincerely,

Pat Hildebrand
Staff Counsel

PH:cl

Enclosure

cc: --- --- District Administrator