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STATE OF CALIFORNIA

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STATE BOARD OF EQUALIZATION

PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001  
TELEPHONE (916) 445-6493

July 25, 1988

REDACTED TEXT

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Preparation and service of subpoenas duces tecum

Dear REDACTED TEXT:

In your letter of May 18, 1988 to the Board, you enclosed two invoices issued by your competitor, REDACTED TEXT of REDACTED TEXT. You write in summary that either you have received incorrect advice from the board regarding the manner in which sales tax applies to the charges you make to your customers for preparing and serving subpoena duces tecum and copying the records subpoenaed, or REDACTED TEXT is undercharging sales tax on its similar services. The difference which you note is that REDACTED TEXT does not charge sales tax on two items on its invoices referred to as a "basic charge" and as "subpoena prep." On the other hand, your invoices refer to subpoena preparation as a "service charge" and you have been informed by Board staff that this charge is taxable. You also charge tax on your "basic charge," which is the charge for obtaining the records to be copied.

Opinion

We first note that under the confidentiality provisions of Revenue and Taxation Code Section 7056, the Board is prohibited from disclosing information which relates to a particular taxpayer to anyone else (with exceptions not relevant here). Therefore, we will not comment in this letter on the application of tax to the invoices from REDACTED TEXT which you enclosed with your letter.

We also note that what you refer to as sales tax, is actually sales tax reimbursement which may be, but is not required to be, charged by a taxpayer to its customer. The sales tax is imposed on the seller of tangible personal property, not the purchaser, and the seller may elect to pass on this tax to its customers as sales tax reimbursement. Civil Code Section 1656.1; Revenue and Taxation Code Section 6051. Even when a taxpayer does not charge sales tax reimbursement on its invoices, the Board's concern is not with that issue, but rather whether the taxpayer is correctly reporting and paying to the Board its taxable gross receipts.

We can, however, describe the correct application of tax to your charges for the preparation and service of subpoenas and for copying records. Sales and Use Tax Regulation 1528(a)(2), provided in part as follows:

“The preparation and service of a subpoena duces tecum is an exempt service. The tax does not apply to separately stated charges for the service even though the subpoena is served in connection with the performance of a contract to produce and deliver photostat copies of medical records.” (Emphasis added).

Thus, regardless of what a taxpayer calls this service, charges which are fairly allocated to the actual preparation of a subpoena, as well as service of subpoenas, are nontaxable charges. It does not matter whether the charge is referred to as a “service charge” or a “subpoena preparation” charge. Our view is that you should not report as part of your taxable gross receipts, your charges for the actual preparation of subpoenas. Your basic charge is subject to tax however, since it is a service which is a part of the sale of the photocopies you made following the service of the subpoena duces tecum. (Revenue and Taxation Code Section 6012(b)(1)).

By copy of this letter, I am asking the Board’s REDACTED TEXT office to discuss with REDACTED TEXT the correct application of tax on its subpoena duces tecum and copying services. I enclose a copy of Regulation 1528 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott  
Tax Counsel

JA:jb  
Enclosure

cc: REDACTED TEXT