



STATE OF CALIFORNIA

515.0002.690

STATE BOARD OF EQUALIZATION

Legal Division – MIC:82
 450 N STREET, SACRAMENTO, CALIFORNIA
 (P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
 Telephone: (916) 324-2634
 FAX: (916) 323-3387

JOHAN KLEHS
 First District, Hayward

DEAN F. ANDAL
 Second District, Stockton

ERNEST J. DRONENBURG, JR.
 Third District, San Diego

BRAD SHERMAN
 Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

November 18, 1996

Re: Unidentified Taxpayer
 "Creative Consultation and Marketing Plan"

Dear REDACTED TEXT,

This responds to your inquiry dated July 22, 1996 concerning a design and marketing company REDACTED TEXT. Although you do not say, we assume for purposes of responding to your inquiry that REDACTED TEXT is located in California. Additionally, in order to give you accurate advice, we have made a number of other assumptions to clarify the information which you provided. If the assumptions which we have made are incorrect, the advice contained in this letter may be incorrect. Please also be aware that since you do not identify the company, this opinion letter does not come within the provisions of Revenue and Taxation Code section 6596.

You indicate that REDACTED TEXT is hired to write "the business strategy and marketing plan" for a client, and performs the following-described work. REDACTED TEXT has meetings and defines with the client the scope and requirements of the work to be performed. REDACTED TEXT also asks the client questions in person and on the telephone, has ongoing discussions with the client concerning the work, observes and listens to internal discussions of the client, and conducts field research.

The research includes telephone interviews, "on-line" research via computer, and other investigative research. REDACTED TEXT's research culminates in its review of the relevant materials, and a written compilation and summary of the research for the client.

REDACTED TEXT also writes a "complete strategic marketing plan" (plan) for the client. The plan describes and analyzes the research, and contains REDACTED TEXT's professional analysis and recommendations for a marketing strategy for the client. The plan is laser printed and placed in three custom binders for the client.

For purposes of this opinion letter, we assume that there are no transfers of possession of, or title to, tangible personal property from REDACTED TEXT to the client except for one written copy of the compilation and summary of the research, and one copy of the complete plan given to the client in the

form of three custom binders. We also assume that the three custom binders each contain different segments of the plan, and are not merely three separate copies of the plan; and that the laser printing of the plan is performed by REDACTED TEXT.

You indicate that REDACTED TEXT may incur travel expenses to meet with the client or third parties concerning the plan. Various other activities related to REDACTED TEXT's administration and coordination of its work include scheduling, call follow-ups, documentation, couriers, and meeting arrangements.

You ask, "Which events described above are 'taxable' events, with respect to [REDACTED TEXT's] fees?" You also ask whether the following items are subject to tax: REDACTED TEXT's: various "out of pocket" expenses related to the work, including travel; REDACTED TEXT's charges for its design and layout of the binder cover, text pages and division pages; REDACTED TEXT's charges for writing and laser printing the plan; and an 'accounting fee' which REDACTED TEXT charges in addition to the cost of anything which it must purchase for the work.

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempted or excluded from taxation by statute. (Rev. & Tax. Code § 6051.) The term "sale" means and includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) When sales tax does not apply, use tax is imposed on the sales price of tangible personal property purchased from a retailer for storage, use or other consumption in California. (Rev. & Tax. Code §6201.)

Persons engaged in the business of rendering services are consumers, not retailers, of the tangible personal property they transfer incidental to the performance of the service. (Reg. 1501.) Tax applies to the sale of the property to those persons or to their use of that property. (Id.) The distinction between the sale of tangible personal property and the transfer of such property incidental to the providing of a service is set forth in Sales and Use Tax Regulation 1501:

"The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of 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. If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred [A]n idea may be expressed in the form of tangible personal property and that property may be transferred for a consideration from one person to another; however, the person transferring the property may still be regarded as the consumer of the property. [An example of this is that] the transfer to a publisher of an original manuscript by the author thereof for the purpose of publication is not subject to taxation. The author is the consumer of the paper on which he has recorded the text of his creation. However, the tax would apply to the sale of mere copies of an author's

works or the sale of manuscripts written by other authors where the manuscript itself is of particular value as an item of tangible personal property and the purchaser's primary interest is in the physical property....”

Thus, developing individualized information and advice through research, analysis and recommendation, and then providing the customized research to the client in the form of a written compilation and summary, as well as providing the client a custom written report or plan, is a service. The true object of the contract is for the client to obtain the customized information and advice which REDACTED TEXT develops for the client, not to obtain tangible personal property in the form of a laser printed plan in custom binders or a written compilation of the research. As such, charges for the customized research information and strategic marketing plan prepared by REDACTED TEXT for its client are not subject to tax, and the tangible form in which it is presented is merely transferred to the client incidental to the service performed. (Reg. 1501; BTLG Annot. 515.0970 (3/20/92); BTLG Annot. 515.1360 (5/10/66).) Sales of additional copies of the plan, however, are taxable sales of tangible personal property. (Reg. 1501; see Reg. 502(d)(5)(F).)

As the provider of a service, as opposed to being the seller of tangible personal property, REDACTED TEXT is the consumer of tangible personal property which it uses in the process of performing the service for the client, and the gross receipts from the sales of such property to REDACTED TEXT are subject to tax. REDACTED TEXT's charges to the client (including charges for travel; for consulting with the client; for research; for analysis and advice; for writing the research compilation and summary, and the plan; for creation, production, design and layout, and laser printing of the binder cover, text pages and division pages of the binder; for other expenses related to the work; and for REDACTED TEXT's fees related to the work) are not subject to tax.

In summary, REDACTED TEXT's charges for developing and producing the research compilation and summary, and the business strategy and marketing plan are not subject to tax, so long as the only tangible personal property which REDACTED TEXT transfers to the client is one copy each of the written compilation and summary of the research, and the plan. Charges for any additional copies transferred to the client in this state are subject to tax.

I hope this information is of assistance. Please write again if you have further questions.

Sincerely,

Sharon Jarvis
Senior Tax Counsel

SJ:rz

REDACTED TEXT

cc: REDACTED TEXT District Administrator REDACTED TEXT