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REDACTED TEXT
Copies of reports furnished to members

In your April 12, 1989 memorandum to Legal, you write:

“FACTS:

“Utility companies nationwide pay a lump sum fee (per year, based on the size of the utility) to become members of REDACTED TEXT. As members, the utility companies are given access to conferences, telephone support, computer code access to REDACTED TEXT data base and to published reports and report updates.

“REDACTED TEXT contracts with various research contractors to perform scientific research pertinent to the electric power industry. REDACTED TEXT orders and directs the research and is alone responsible for the type and number of research projects done.

“At the conclusion of a research project, a written report is submitted by the contractor to REDACTED TEXT. REDACTED TEXT then contracts with a graphic designer and printer to produce a number of copies of the report in book form. The first twenty-five (25) copies of the report are delivered to REDACTED TEXT directly and the printer is directed to charge tax to REDACTED TEXT. The remainder of the order is delivered to a distributor who is responsible for the distribution of the reports on the order of REDACTED TEXT.

“Copies of the reports are available to non-members on a per book charge basis. These sales are handled through the distributor and reported on his sales tax return.

“The distributor, under direction of REDACTED TEXT sends copies of the reports to members who request them. A member may request copies of all reports or a selected number of different reports or no reports at all. There does not appear to be a limit on the number of reports that can be requested as long as the number is 'reasonable'.

“At times the distributor is requested to send additional copies to REDACTED TEXT for internal use or distribution in a seminar. If non-members attend a seminar there is a lump sum charge.

“QUESTION

“Is REDACTED TEXT the consumer or the retailer of the reports furnished to requesting members? If they are the consumers, would all books distributed to members worldwide be subject to tax? What would be the tax liability for the books provided in seminars? (within and outside of California).”

Opinion

Our opinion is that REDACTED TEXT is the consumer, not the retailer, of copies the reports which it furnishes at no additional charge to the members of REDACTED TEXT who request copies, and to persons attending seminars. We cannot say that REDACTED TEXT is the retailer of the reports to its members since the members receive significant services from REDACTED TEXT which do not constitute taxable sales of tangible property, and a member may not order any reports during the membership period. Where REDACTED TEXT conducts seminars and distributes copies of reports to the participants for a lump-sum charge as part of the seminar, tax does not apply because the conduct of the seminar is a service transaction and the distribution of reports is incidental to that transaction. For example, see Regulation 1502(e) (training services provided by data processing firms).

REDACTED TEXT is located in California, but you do not state where the printer and the distributor are located. If the printer and the distributor are both located in California, then the sales tax applies to the printer's sales of the reports to REDACTED TEXT which the distributor will store on behalf of REDACTED TEXT other than those purchased for resale to non-members.

If the printer is located out of state, and the distributor is located in state, then the use tax, not the sales tax, is the applicable tax on reports shipped by the printer to the distributor. If the distributor merely stores reports on behalf of REDACTED TEXT and on request of out-of-state members, ships reports to out-of-state locations, the exemption from use tax provided by section 6009.1 would apply to those reports, since REDACTED TEXT would have made no use of the reports in California other than to store them for use solely outside the state. This exemption also applies to reports which the distributor ships out of state for REDACTED TEXT's use at seminars out of state.

If both the printer and the distributor are located out of state, then neither sales nor use tax will apply to reports which are never delivered to either REDACTED TEXT or its members in California. If on request of a member in California, the distributor sends a report to that member, REDACTED TEXT would be liable for the use tax on that report. Similarly, if REDACTED TEXT distributes the reports at California seminars, the use tax applies.

JA:jb