



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 324-2637
FAX: (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

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

KATHLEEN CONNELL
Controller, Sacramento

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

June 25, 1997

Mr. P--- M---
I--- H--- R--- S---
XXX W. --- --- ---, Suite XXX
--- ---, California XXXXX-XXXX

Re: Internet and World Wide Web Activities

Dear Mr. M---:

This is in response to your May 15, 1997 letter asking how tax applies to charges for activities undertaken by your company related to the Internet and World Wide Web (WWW).

Few facts were provided about your company's operations. You state that your company developed a job posting website and "Diversilink" on the WWW. We understand that your company charges a fee for posting job listings at these sites. You do not indicate what activities and processes are undertaken by your company in order to post these listing on the Internet and WWW.

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 assume from your letter that your company does not sell or lease any tangible personal property to its customers in the course of providing its employment postings on the Internet and WWW. That is, we assume that I--- H--- R--- S--- 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 your company's customers provide you with job announcements that you use to create job listings on the Internet and WWW and that these announcements and subsequent Internet/WWW listings are not then provided to anyone in tangible form. (If our assumptions are incorrect, our answer would be different.) Under these facts, tax does not apply to your company's charges to its customers for creating a job listing web page since it is not selling or leasing any tangible personal property.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Senior Tax Counsel

WLA/cmm

cc: San Jose District Administrator (GH)