

**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

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October 8, 1996

E. L. SORENSEN, JR
Executive Director

Ms. D--- P---
R--- I--- G---, L.P.
XXXX --- Highway, Suite XXX
---, Maryland XXXXX

Re: Account No. SS --- XX-XXXXXX

Dear Ms. P---:

This is in response to your letter dated September 5, 1996 regarding the application of tax on your company's operations. You state:

"R--- I--- G---, L.P. [(hereafter "RIG")] is in the business of providing commercial real estate information to our customers through a license agreement. Our sales are based on monthly fees charged for this license agreement. Our database is updated daily by our team of researchers. The information provided is in the form of data and multi-media which are placed on disks and CDs, respectively. The date portion of the information becomes obsolete unless our customers receive updated data disks. On the other hand, the multi-media information on the CDs does not become obsolete as it includes actual pictures of commercial buildings. Pursuant to our license agreement, the customer is in breach of contract if the CDs are not returned.... We do not sell the disk or CD...."

We understand your letter to ask whether tax applies on the amounts RIG charges its customers for its disks and CD ROMs.

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 exempt from taxation by statute. (Rev. & Tax. Code § 6051.)¹ When the sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for storage, use or other consumption of that property in

¹ This tax is imposed on the retailer who may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code § 1656.1; Reg. 1700(a).)

California. (Rev. & Tax. Code §§ 6201, 6401.)² Taxable gross receipts or sales price generally include all amounts received with respect to the sale, with no deduction for the cost of materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code §§ 6011, 6012.) Gross receipts or sales price do not include amounts from the sale of a service provided the service is not part of the sale of tangible personal property. (See Reg. 1501; copy enclosed.) 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 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.

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 neither 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 understand that RIG accumulates commercial real estate information for certain geographic regions and compiles that information onto computer disks and CD ROMs. RIG provides these disks and CD ROMs to its customers on a temporary basis. We further understand that RIG itself places the information on its disks and CD ROMs and does not purchase disks and CDs from a third party which already contain the relevant information. Thus, if RIG is regarded as leasing its disks and CD ROMs to its customers (as opposed to providing a service), tax would apply on the rental receipts from these materials since RIG would not be leasing the property (i.e., the disks and CDs) in the same form as acquired.

Where tangible personal property is furnished to a customer to transmit information that was specifically created, collected, or compiled to meet that customer’s particular order, the transaction is regarded as a non-taxable service transaction. (See Reg. 1501.) In that type of situation, the transfer of a single copy of the compiled information on a computer disk or paper report is considered incidental to the providing of the service and tax only applies to the sale of such materials to the seller of the service. (*Id.*) However, where a transaction involves the delivery of tangible personal property which includes information not customized to a customer’s order (including a report previously prepared by the retailer on a custom basis) or generated from a pre-existing database, the transaction is a sale or lease of tangible personal property and is subject to

² This tax is imposed on the retailer actually storing, using, or otherwise consuming the property. (Rev. & Tax. Code § 6202.) A retailer engaged in business inside this state is required to collect this tax from its customers and remit it to this Board. (Rev. & Tax. Code §§ 6202, 6203.)

tax unless an exemption otherwise applies. (Rev. & Tax. Code §§ 6051, 6201.) Information on computer disk or CD ROM is generally not considered “custom” when the seller/lessor maintains an established price based on the item ordered, the product sold or leased to the customer is generic in nature (e.g., the product is available on a state or county-wide basis), the product is delivered on a medium generally requiring mass production, or the product is generated from a seller’s pre-existing database.

We understand that RIG is providing its numerous customers with non-customized information on computer disk and CD ROM at a standardized price. Under these facts, we regard the true object sought by RIGs customers to be the disks and CDs for the information contained in those items and not the providing of a service by RIG. This means that RIG is leasing disks and CDs to its customers not in substantially the same form as acquired. RIG must therefore collect tax on the rentals payable for its disks and CDs and remit these amounts to this Board.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Tax Counsel

WLA:rz

Enclosure – Reg. 1501

cc: Out-of-State District Administrator – (OH)