STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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July 3, 1995

D--- H. W---
President
D--- H. W--- Associates, Inc.
XXXX --- Plaza, Suite XXX
--- ---, CA XXXXX

Re: Sales and Use Tax Regulation 1501

Dear Mr. W---:

This letter is in reply to your March 9, 1995, letter regarding the application of sales tax to your client's charges for producing what you called "events."

In your letter you state:

> One of my clients (Company X) produces corporate communications in the form of events and video. I understand that if the video is in the form of a motion picture it is covered by Regulation 1529. However, I would like to address the application of sales and use tax to the events.
>
> The events produced by Company X for its clients are employee meetings held to introduce new products or corporate messages or to reward employees for performance. The meetings (or shows) range in audience size from twenty-five to one thousand attendees. Company X's internal staff of producers create and produce these shows using freelance artists and other vendors. Company X's involvement is total from initial concept to final execution.
>
> Company X contracts and manages elements for these events/shows that may include any or all of the following:
>
> - Meeting concept and creative development
> - Skits and actors, costumes, props

- Computer graphic projections (visual support for executive speakers)
- Stage lighting
- Sound reinforcement (microphones, speakers, etc.)
- Sets and set decorations
- Projection equipment for videos and computer graphics
- Labor to set up and operate equipment during rehearsals and performance

A typical show is set up in a hotel ballroom, or other suitable location, and uses rented equipment that Company X specifies, contracts and pays for. Set ups are temporary and use labor contracted by Company X.

When the show is over, rented equipment is returned and sets are either destroyed or returned to the rental facility. No part of the show remains or is given to the client after the performance.

We take the position that Company X is the consumer of all items of TPP and related services that were purchased in order to produce the event or show. Company X pays sales or use tax on those purchases. The "true object" of the contract between Company X and its clients is the show or event, not the actors, sets or equipment used to stage the show. We believe that tax does not apply to the services billed to the clients of Company X for producing events or shows under the conditions outlined above.

You ask if your understanding of sales and use tax application to your client's production of these events is correct.

Section 6051 of the Revenue and Taxation Code imposes the sales tax on retailers for the privilege of selling tangible personal property at retail in this state. The measure of tax is the gross receipts from the retail sales in the state of tangible personal property. Section 6007, in part, provides that a retail sale means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. Any lease of tangible personal property in any manner with exceptions not relevant here for a consideration is a "sale" as defined in section 6006 and a "purchase" as defined in section 6010 of the Revenue and Taxation Code. The tax on such a "sale" is measured by the rentals payable. (Sales and Use Tax Regulation 1660(c)(1).)

Sales and Use Tax Regulation 1501 provides that persons who are engaged in the business of rendering service are consumers, not retailers, of the tangible personal property which they use incidentally in rendering the service. Tax applies to the sale of the property to them. 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 fireworks company's charge for presenting a fireworks display is not subject to sales tax when the fireworks company retains title to and possession of the fireworks, and its employees explode the fireworks. In such a case, the fireworks company performs a service and is the consumer of the fireworks so furnished. (Sales and Use Tax Annot. 515.0990, 10/7/81.) Similarly, where a decorating company contracts not only to build a float, but also to enter, display, operate the float in a parade, and furnish the driver and vehicle, the decorating company is the consumer of the material which it makes into the floats, since it does not transfer possession of the float to the customer. (Sales and Use Tax Annot. 515.1000, 10/21/54.)

You state that Company X uses tangible personal property during the course of performing its contracts for its clients. In some instances property is rented by Company X specifically for use in the particular event. Company X also uses freelance artists and vendors for the production of the various events. Company X does not transfer possession of the tangible personal property to its clients either before, during, or after the event. Company X's employees operate, set up, tear down and return the property to the rental company. Further, Company X's clients do not retain any of the tangible personal property used during the event. The facts you described are similar to those in the two annotations cited above. That is, the property is used by the company providing the event, and the client does not take possession of the property. Company X is the consumer of all tangible personal property it uses to produce the events, and tax applies to the sale or rental of that property to Company X.

Since you have not disclosed the name of your client, your client may not rely upon the contents of this letter for purposes of Revenue and Taxation Code section 6596. If you have any further questions, please advise.

Sincerely,

Anthony I. Picciano
Staff Counsel

AIP:es