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STATE OF CALIFORNIA

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July 25, 1995

This is in response to your letter dated May 30, 1995 regarding the application of tax to various activities undertaken by the REDACTED TEXT.

Few facts were provided about REDACTED TEXT's operations. We assume that REDACTED TEXT is engaged in the retail business of selling tangible personal property inside this state. You ask how tax applies to certain activities undertaken by your company. For purposes of clarity, we have separately responded to each of your requests below.

- “a. Data Processing Services – i.e., Embossing records, formatting information for transmission, account maintenance, microfiche production and purchase authorization on credit transactions.”

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 exempt from taxation by statute. (Rev. & Tax. Code § 6051.¹) A sale means any transfer of title or possession of tangible personal property for a consideration and includes fabrication of property furnished by consumers. (Rev. & Tax. Code § 6006.) Taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.) A retailer's gross receipts do not include amounts received from the sale of a service provided the service is not part of the sale of tangible personal property. (See Reg. 1501.) 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 in California. (Rev. & Tax. Code §§ 6201, 6401.)

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.)

Question “a” lists five separate activities undertaken by REDACTED TEXT. I note, however, that it is unclear from your letter what, if any, tangible personal property is sold or transferred by REDACTED TEXT to its customers by way of its operations involving “formatting information for transmission,” “account maintenance,” and “purchase authorization on credit transactions.” If these activities are performed as part of the sale of tangible personal property to REDACTED TEXT customers or consist of the fabrication of property, tax applies to such charges. Tax does not apply to REDACTED TEXT charges for these activities where they are performed only as part of a service to its customers and no tangible personal property is transferred to or fabricated for its customers. (Reg. 1501.)

Subdivision (d)(4) of Regulation 1502 (copy enclosed) explains the application of tax to microfiche operations.² This regulation provides that tax applies to charges for microfilming or photorecording except where the microfilming or photorecording is done under a contract for the service of developing original information from customer-furnished data. (See also Business Tax Law Guide Annot. 420.0160 (7/9/53) (Sales tax applies to the entire charge made for microfilming records).) This means that tax applies to REDACTED TEXT “microfiche production” if this production is part of the sale of microfiche to its customers that does not consist of original information it develops from information provided to it by its customers. That is, tax applies to REDACTED TEXT production and sale of microfiche unless REDACTED TEXT received information from its customers for processing (e.g., summarizing, computing, extracting, sorting, or sequencing) and outputs that original information via microfiche.

You also ask how tax applies to “embossing records.” We regard embossing as fabrication, and charges for such embossing are part of the retailer’s gross receipts when performed on new tangible personal property. (Business Tax Law Guide Annot. 315-0500 (1/26/50).) Embossing performed on used property is generally regarded as non-taxable repair labor. (Id.)

“b. Credit Reporting Services – i.e. REDACTED TEXT and REDACTED TEXT.

Persons engaged in the business of rendering services are consumers, not retailers, of the tangible personal property they transfer incidentally 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...”

2. Regulation 1502 (d) (4) specifically references “microfilming” and not “microfiche.” Nevertheless, microfiche is defined as “a sheet of microfilm containing rows of microimages of pages of printed matter” (Webster’s Collegiate Dict. (10th ed. 1993) p. 735) and is treated as microfilm for sales and use tax purposes.

We assume from your question that REDACTED TEXT purchases credit reports from REDACTED TEXT or REDACTED TEXT on its customers for its use in determining a customer's credit worthiness. We further assume that you are asking whether REDACTED TEXT's charges for these reports to REDACTED TEXT are subject to tax. Under these facts, we regard REDACTED TEXT's sale of a customer credit report to REDACTED TEXT as the providing of a nontaxable service. The providing of an actual report (i.e., the credit report on paper) by REDACTED TEXT is incidental to the credit reporting service provided to REDACTED TEXT. Sales of additional copies of the report would be regarded as taxable sales of tangible personal property. (Reg. 1502 (d)(5)(F).)

“c. Subscriptions-i.e. Real Estate Reports (Property listing, evaluations etc.), Financial Accounting Standards Bulletins-FASB, and Commerce Clearing House Manuals-CCH”

We assume that REDACTED TEXT purchases these subscription for use from a vendor inside this state. We also assume that you are asking whether the vendor's charges for these subscriptions are subject to tax.

When a retailer sells REDACTED TEXT tangible personal property inside this state, such as the subscriptions in your question, that sale is subject to tax unless the sale to you is exempt. If the sale is not exempt, sales tax applies to all charges made by the retailer, including all separately stated charges for expenses in producing the property sold to REDACTED TEXT. The exemption relevant to the sale of these subscription materials to REDACTED TEXT is set forth in Revenue and Taxation Code section 6362.7:

“(a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property which becomes an ingredient or component part of any newspaper or periodical that is distributed without charge or regularly issued at average intervals not exceeding three months, and any such newspaper or periodical.

“(b) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property which becomes an ingredient or a component part of any periodical regularly issued at average intervals not exceeding three months, and any such periodical, that is sold by subscription and delivered by mail or common carrier.

“(c) For purposes of this section, ‘periodical’ means any publication that appears at stated intervals at least four times per year, but not more than 60 times per year, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity or subject matter, and

there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The term does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-months period.”

Since you have not provided us with copies of the “real estate reports,” we are unable to determine whether these items qualify as a periodical within the meaning of the exemption. If these reports do not qualify as a periodical, all of the vendor’s charges for the sale of these reports to REDACTED TEXT are to be subject to tax which the vendor may collect from REDACTED TEXT if the contract of sale so provides. (Rev. & Tax. Code § 6051; Civ. Code § 1656.1.) Subscriptions to FASB and CCH services are exempt from tax only to the extent they meet the requirements as set forth above.

We have been unable to locate a seller’s permit number for REDACTED TEXT. Please contact me or my secretary with the seller’s permit number so that this letter can be filed appropriately. If you have any questions in the meantime or if our assumptions set forth above are incorrect, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

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Enclosure