

Memorandum

120.0900

To: Mr. Robert Tucker
Audit Evaluation & Planning Sec. - MIC:40

Date: August 23, 1993

From: Ronald L. Dick
Legal Division - MIC:82

Subject: [L] - No Permit

This is in reply to your June 23, 1992 memorandum regarding the application of sales tax to charges by [L] for word processing.

You note that the final product which [L] provides to its customers is a copy of the typed document on diskette. Occasionally, [L] provides a copy of the information on paper as well as on the diskette. You asked whether sales tax applies to [L]'s charge for the product of the word processing when the product is transferred on a diskette.

No, Sales and Use Tax Regulation 1502, Computers, Programs, and Data Processing, provides at subdivision (c)(4) that charges for the transfer of computer-generated output are subject to tax where the true object of the contract is the output and not the services rendered in producing the output. Examples include art work, graphics and designs. On the other hand, when the true object of the contract is the service rendered, tax does not apply to the charge. As you noted, an August 26, 1986 opinion from the legal staff concluded that charges for word processing were subject to tax when the product was delivered to the customer on magnetic disc as storage media. That opinion was issued before Regulation 1502 was amended to add the present subdivision (c)(4) noted above.

You also asked whether tax applies to a charge for one of either a diskette or a hard copy if [L] provides both to the customer. We believe that, if [L]'s contract with its customers requires [L] to initially provide the information in the two forms, a diskette and a hard copy, the charge is nontaxable. [L] is the consumer of, and tax applies to the sale to [L] of, the tangible personal property which [L] transfers to the customer incidental to the service. On the other hand, if [L]'s contract requires it to produce only one or the other; that is, a diskette or a hard copy, [L]'s sale of another copy, either in the same form or in the other form, is a sale of tangible personal property to which sale tax applies.

[L]'s May 15, 1993 letter suggests that the tangible personal property which [L] provides

to its customers includes illustrations. [L]'s charges for the output are nontaxable if the output consists only of word processing or composed type. (Sales and Use Tax Regs. 1502.1, Word Processing subd. (a); 1541, Printing and Related Arts, subd. (f)(3).) On the other hand, when the output is a combination of composed type and illustrations, tax applies to the total charge attributable to pages which contain illustrations (Sales and Use Tax Reg. 1541, subd. (f)(4) and (5).)

RLD:plh