



STATE BOARD OF EQUALIZATION

(916) 322-6083

January 7, 1991

Re: Preparation of Seminar and Seminar Materials

Dear Mr. ---:

This is in response to your letter of September 24, 1990, in which you request an opinion concerning the application of California Sales and Use Tax Law to work you performed for [A] Company. I will separately address each of the components listed in your letter.

1. Advise and assist in writing and developing a seminar and the materials used in that seminar by the participants and presenters. Deliverables consist of masters for printing, participants' guides and making presentation materials. (e.g., overhead transparencies)

A retailer's retail sale of tangible personal property is subject to sales tax unless specifically exempted by statute. (Rev. & Tax. Code §6051.) On the other hand, the providing of services is not subject to sales tax. (Reg. 1501.) The distinction between the sale of tangible personal property and the transfer of tangible personal property incidental to the performance of a service is one of the true object of the contract. If the true object of the contract is the service itself, the transaction is not subject to sales tax even though some tangible personal property is transferred. Under such circumstances, the service provider is regarded as the consumer of any tangible personal property used in the performance of the service, including property incidentally transferred to the customer.

The activities you describe, including writing and developing a seminar and the materials used in that seminar by participants and presenters, are regarded as services. Therefore, no sales tax applies to your charges for those activities. The delivery of masters for printing, participants' guides and making presentation materials is incidental to the performance of those services, and thus also not subject to sales tax. Instead, you are the consumer of any materials used in the development of the seminar and materials.

- 2. Reproduction of binders and reproduction materials – 350 sets to be used in the workshops.

Charges for the reproduction of binders and participant materials are subject to sales tax.

- 3. Writing evaluation instruments. (e.g., test and reaction questionnaires)

These charges are included in services provided to your customer and are not subject to sales tax. In addition, your charges for participating in an evaluation or “mock-up” session of the seminar, including travel costs, are not taxable.

- 4. Developing and producing the artwork for a flyer. Deliverable is camera ready art.

Sales tax applies to your charges for final art used for actual reproduction by photo-mechanical or other processes or for display purposes. I understand that you separately invoiced your customer for printed flyers advertising the seminars. Revenue and Taxation Code Section 6379.5 exempts from sales tax the gross receipts from the sale of catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services. Subdivision (b) of Sales and Use Tax Regulation 1541.5 states that tax does not apply to the sale of printed sales messages which are:

- (1) (Printed to the special order of the purchaser;
- (2) mailed or delivered by the seller, the seller’s agent or a mailing house acting as the agent for the purchaser, through the United States Postal Service or by common carrier; and
- (3) received by any other person at no cost to that person who becomes the owner of the printed materials.

Assuming that the above three requirements were met, your charges for the printed flyers are not subject to tax.

I hope this answers your questions. However, if you need further information, please feel free to write again.

Very truly yours,

Janet Vining
Tax Counsel

JV:wk
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