

**STATE BOARD OF EQUALIZATION**

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March 18, 1996

Mr. J--- F---
Senior Manager
Multistate Tax Services
--- & --- LLP
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Dear Mr. F---:

This is in reply to your December 19, 1995 letter regarding the application of sales and use tax to charges for educational programming a company provides to school districts. You provided the following background information:

“The Company is a not-for-profit corporation that sells educational programming services to school districts. These services feature science and language art curricula broadcast nationwide via satellite with an interactive communications network linking students and teachers nationwide. The Company charges a lump-sum school site annual license fee of approximately \$2,500 per curricula with discount pricing available. The following items are included with the site license fee:

1. Interactive Language Arts and/or Science Video Program Series
2. Video series on professional development
3. Student and teacher participation in the interactive network
4. Curriculum support available through a 800 telephone number
5. One set of student magazines (quantity of 30 magazines per set)
6. One teacher resource guide.
7. One basic science kit and/or literature starter set
8. One video tape regarding parental involvement in education.

“Items 1 and 2 consist solely of broadcast programming services. Items 3 and 4 consist solely of voice and data transmission via telephone lines. Items 5 through 8 consist of tangible personal property (TPP), books, materials, etc. Additional books and materials are available upon request for an additional charge which is separately stated from the annual license fee.”

We assume items 1 and 2 result in the company's merely providing remote site broadcasting of the video programs to the school districts and that the company does not transfer videotapes or other tangible personal property embodying the programs. We also assume that items 3 and 4 do not result in the company transferring tangible personal property to the school districts. Finally, we assume items 1 and 2 have substantial value in that the company provides significant instruction through the language, science, and professional development broadcast video series.

As you noted, when the true object of a contract is for a person to render services, tax does not apply to the charge regardless that the person providing the service incidentally transfers some tangible personal property to a client. Sales and use Tax Regulation 1501, Service Enterprises Generally, gives the example of a firm which performs business advisory, recordkeeping, payroll, and tax services. Tax does not apply to the charge for those services regardless that the firm incidentally provides forms, binders, and other property to its clients in rendering the services. Rather, tax applies to the sale of the tangible personal property to the service provider. On the other hand, when the true object of a contract is the sale of tangible personal property, tax applies to the total gross receipts of the sale with no deduction for the cost of the property sold, materials used, labor or service cost, or any other expense. (Rev. & Tax. Code § 6012, subd. (a).)

We recognize that there are certain transactions which result in both the performance of a service and the sale of tangible personal property for a single price. For example, under Sales and Use Tax Regulation 1526, tax does not apply to charges to repair or recondition tangible personal property to refit it for the use for which it was originally produced. However, if the repairman furnishes parts and materials in connection with the repair work which have a retail value of more than ten percent of the total charge, the repairman is the retailer of the parts and materials. Tax applies to the portion of the repairman's charge which represents the fair retail selling price of the parts and materials. (Sales and Use Tax Reg. 1546, subd. (b)(1).)

The Board's legal staff has taken the following position regarding charges for correspondence courses:

"Tax applies to books and lesson materials furnished to students in connection with a correspondence course. If the price of the books and materials is not separately stated, the tax applies to their fair retail selling price. The school may purchase all such books and materials for resale. Tax does not apply to books and materials mailed to an out-of-state student." (Bus. Taxes Law Guide Annot. 295.0140 (10/23/53).)

Again, assuming the company to which you refer provides significant instruction through the broadcast of the video series, we believe the application of tax is the same as to charges for a correspondence course; that is, tax does not apply to the portion of the company's charge attributable to the broadcast services (items 1 through 4). Tax does apply to the fair retail selling price of the set of student magazines, the teacher resource guide, the science kit or literature

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starter set, and the videotape on the subject of parental involvement in education (items 5 through 8).

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Supervising Staff Counsel

RLD:sr