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August 30, 1993

Mr. R--- J. F---
President
F--- & A---
XXXX --- --- Highway, Suite XXX
---, CA XXXXX-XXXX

BURTON W. OLIVER
Executive Director

Dear Mr. F---:

This is in reply to your August 6, 1993 letter regarding the application of sales tax to the following facts you provided concerning charges by persons who perform photocopying and process serving:

"Generally, a company is retained by a defense attorney to prepare and secure a subpoena for records, documents, X-rays, pathology slides, etc.; to serve the subpoena once issued by the court; copy the subpoenaed records and other materials for delivery to all parties in the action; and return the subpoenaed records and other materials to the party providing the same."

As you know, the transfer of the photocopies by the photocopy company in this state is a retail sale of tangible personal property subject to sales tax. (Rev. and Tax. Code Sections 6006, 6051.) The taxable gross receipts include the total amount of the sale with no deduction for the cost of the property sold, materials used, labor or service cost, or any other expense. (Rev. and Tax. Code section 6012, subd. (a).)

The general rule applied to charges for photocopies of records is set forth in Sales and Use Tax Regulation 1528, Photographers, Photostat Producers, Photo-finishers and X-ray Laboratories, at subdivision (a)(2). A copy of the regulation is enclosed for your further information.

You cited two Business Taxes Law Guide Annotations for our review. Annotation 515.0190 is a statement of the general rule noted above. A photocopy service must include in its taxable gross receipts the charge by the doctor for furnishing a patient's medical records. The charge is one of the "other expenses" which are not deductible from the taxable gross receipts. (Rev. and Tax. Code section 6012, subd. (a)(2).) Annotation 515.0193 states the rule provided in the fifth paragraph of subdivision (a)(2) of Regulation 1528.

You asked that we address the taxability of the specific charges you noted on Appendix A of

your letter, copy attached.

Tax applies to the charges in item 1 of the Appendix where the charges are merely costs to the photocopy company to produce the photocopies.

Tax does not apply to charges 2 through 4 for preparing the subpoenas and certificates of no record. Tax applies to charges 5 through 6.4.

Tax applies to charges 7 and 8 if the charges are for costs incidental to the sale of the photocopies. We assume that you do not mean that the photocopy company merely sends the requested information by telefacsimile such that it does not deliver tangible personal property to its customer.

Tax does not apply to charge 9 if the skip tracing is for the purpose of serving the subpoena.

Tax applies to charge 10 if it is a service that is part of the sale of the photocopies.

Tax applies to charges 11 through 14.

The application of tax to charges for transportation of the photocopies is provided by Sales and Use Tax Regulation 1628, Transportation Charges. A copy of the Regulation is enclosed.

If you have any questions regarding this, I will be on vacation for approximately three weeks beginning August 30. However, Ms. Elizabeth Abreu has recently researched and written on this area of the law. You may contact her at (916) 324-8208.

Very truly yours,

Ronald L. Dick
Senior Staff Counsel

RLD:plh

Enclosures

cc: Ms. Elizabeth Abreu