



STATE BOARD OF EQUALIZATION

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December 8, 1992

BURTON W. OLIVER
Executive Director

Ms. N--- S---
P--- P---, Inc.
XXX --- ---
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Ms. S---:

This is in response to your letter dated September 30, 1992, in which you state:

“I need to know if the following services are taxable or not. If they are taxable, I need to know if there are specific conditions and circumstances that, if followed, would make them non-taxable. I would appreciate a written response from you that I can include in my files.

“Question: We contract with a translation service. We provide them an electronic file on diskette and they return to us that file with a foreign language in place of the English. We will deliver the electronic file on a diskette to our client. They will use this file to compile a software program.

“Should the translation service be charging us tax?

“Is the taxability of this service altered by our delivering the electronic files to the translation service by modem (electronically) and their returning them to us by modem?

“Should we be charging tax to our client?

“Is the taxability of this service altered by our delivering the electronic files to the translation service by modem (electronically)?”

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. To be subject to tax, a transaction must be a sale which includes any transfer of title or possession of tangible personal property for a consideration. Rev. & Tax. Code § 6006(a). On the other hand, a transaction which is a service is not subject to sales tax even though there is a transfer of tangible personal property if the transfer of such property is incidental to the performance of the service. Sales and Use Tax Regulation 1501.

In California there is no exemption for sales of information when the information is delivered in tangible form^{1/}. The only issue is whether a customer has contracted for the information or for the service of compiling the information.

We assume that in each transaction you describe, you are requested by a single customer to translate specific documents, data, or other information written in English to a foreign language and that you subcontract the translation work to another firm. The documents, data, or other information are contained on a floppy disk which you give to the subcontractor who takes the information and translates it to the foreign language. The translated information is entered on the disk which is returned to you. You, in turn, give the floppy disk to the customer who uses the translated information with a software program.

It is our position that each of your agreements to translate specific documents, data, or other information pursuant to the request of a single customer is a service agreement and therefore is not taxable even though the translation is transferred on a tangible medium. Nor are the charges of the subcontractor taxable. If, however, you provide additional copies of the translation to the customer and charge separately for the copies or provide additional copies in bulk, the transfer of the additional copies is a sale and is taxable. In addition, if you offer translations of the same text or information to the public or to a group of customers, your transactions are not for personal services but rather are sales of tangible personal property.

Your business is the consumer of the tangible personal property, such as floppy disks, which it uses incidentally to provide the service. Therefore, tax applies to the sale of such property to your business. If you give your vendor a resale certificate when you purchase such items, you must report and pay use tax measured by your purchase price when you take the items out of inventory and use them in the performance of the service contract.

^{1/} Information transferred by electronic transmission, e.g. over telephone wires, is not delivered in tangible form. Therefore, assuming no other tangible personal property is transferred, charges for information transmitted electronically are not taxable.

Ms. N--- S---

-3-

December 8, 1992
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We are enclosing a copy of Regulation 1501 for your information. If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cl

Enclosure: Regulation 1501