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February 14, 1995

REDACTED TEXT

BURTON W. OLIVER
 Executive Director

Re: SR AB 18-706135

Dear Ms. REDACTED TEXT:

I am writing in response to your letter dated December 2, 1994 concerning REDACTED TEXT, Inc. (REDACTED TEXT). REDACTED TEXT develops and sells prewritten (canned) computer software to the health care industry. I assume for purposes of this opinion that REDACTED TEXT transfers the software to its customers in the form of storage media, as defined in Sales and Use Tax Regulation 1502(b).

You write that REDACTED TEXT never sells its software without also selling the "installation" of the software. "Installation" as defined in your letter "includes installing the software on the clients' system and converting old data into new usable data to be used with our software." Charges for what you refer to as "installation" (hereinafter referred to as "installation and conversion") are separately stated on customer invoices. REDACTED TEXT currently collects sales tax reimbursement from its customers on these charges, but this practice is being questioned by a California customer of REDACTED TEXT. You ask whether the charges are taxable.

Discussion

Sales tax is imposed upon the gross receipts of retailers for their sales of tangible personal property at retail in California, unless otherwise exempted or excluded by statute. (Rev. & Tax. Code § 6051.) Sales of prewritten computer programs transferred to a customer in the form of storage media are taxable sales of tangible personal property. (Reg. 1502(f)(1).) The taxable gross receipts from a retail sale of tangible personal property include the total amount of the retail sale price, including any amounts paid for services that are a part of the sale, unless such service is excluded by statute. (Rev. & Tax. Code § 6012.)

When a customer may not purchase tangible personal property without also purchasing a certain service, that required service is regarded as part of the sale of the property. Therefore, unless otherwise excluded by statute, the charges for such a required service are a part of the taxable gross receipts from the retail sale of the property. (See e.g., Rev. & Tax. Code § 6012(c)(3); Reg. 1502(g).) An example of a charge for a service which is excluded from

taxable gross receipts is the price received by a retailer for labor or services used to install the property sold. (Rev. & Tax. Code § 6012(c)(3).) In the instance of the installation of a prewritten computer program, installation includes the actual installation of the software, and the testing of the program on the purchaser's computer to insure that the program operates as required. (Reg. 1502(f)(1)(E).)

Since REDACTED TEXT transfers the canned programs which it sells to its customers in the form of storage media, those sales are taxable sales of tangible personal property. The installation and conversion services about which you write are required as a part of the sale of that software. Therefore, the charges for those services are a taxable part of the sale unless they are otherwise excluded by the Sales and Use Tax Law.

As noted earlier, there is an exclusion for charges for the service of installing prewritten computer programs and testing the prewritten program on the purchaser's computer to insure that the program operates as required. However, this exclusion does not encompass any other services, such as converting a customer's data into a format suitable to be used with new software. (See Reg. 1502(g).)

Thus, the portion of REDACTED TEXT's installation and conversion charges which are attributable to the actual installation of the software itself and to the testing to insure that the program operates as required are nontaxable. However, the portion of the installation and conversion charges which are attributable to converting an REDACTED TEXT customer's data to a different format to be used with REDACTED TEXT software are not a part of installation, as that term is defined in the Sales and Use Tax Law. Since the conversion service is a required part of the sales contract, charges attributable to that service are includible in the taxable gross receipts from the sale of the REDACTED TEXT software.

I hope this information is of assistance. Please feel free to write again if we may answer further questions.

Sincerely,

Sharon Jarvis
Staff Counsel

SJ:es
REDACTED TEXT_{ltr}

cc: Torrance District Administrator (AB)