



STATE BOARD OF EQUALIZATION

February 5, 1970

Gentlemen:

Your letter of January 12, 1970 addressed to our Santa Ana office has been referred to this office for reply. You request our opinion as to the application of our BTGB 68-7, "Application of Sales Tax to Automatic Data Processing Services", to the use of your product, "C.F.P.", in an automatic data processing service bureau environment.

We understand that your C.F.P. unit "takes a single ply fanfold output from the computer printer and with the use of an overlay creates headings and lines that were formerly created by the computer printer or by preprinted forms; reduces the 14-7/8 x 11 size to 11 x 8-1/2; sorts, collates, and reproduces the desired number of pages in one unattended operation.

You posit several factual situations, advise us of your interpretation of the application of the bulletin to these situations, and request that we verify your interpretation or otherwise state our opinion as to the application of the tax.

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- (1) "If a customer brings his own fanfold to a service bureau to be reproduced with no processing involved, the resulting charge will be a taxable item."

We agree.

- (2) "The problem of interpretation arises when a service bureau reproduces a customer's output on a C.F. P. for an application that was not taxable when multipart paper was used.

"Does the fact that, for example, four copies that were produced on a multipart carbon form on a computer printer and are now produced on the C.P.F. affect the nontaxable status of the total application?"

"Conclusion – the C.P.F. will not jeopardize the nontaxable status of an application if the same number of copies are supplied as were supplied when using multipart carbon paper and if the charge to the customer remains the same."

In our opinion, the basic processing remains nontaxable; however, the charge for the utilization of the C.F.P. is subject to tax. Bulletin 68-7 specifies, in section II-B(4):

“In all situations where data are transferred to microfilm or photorecording paper by means other than by the use of a computer program (on-line) and where no new information is developed, the receipts are subject to tax. This would be true in a situation where data on magnetic tape are converted into combinations of alpha-numeric printing, curve plotting and/or line drawings, and put on microfilm or photorecording paper.

“When data are processed using a computer program and new information is developed as a result of the processing, tax will not apply to the processing charge as the real object sought by the client is a service.” [See now Regulation 1502. SPJ 12/16/04].

Since the C.F.P. is offline and produces a fanfold with no additional information, the factual situation under consideration seems analogous to the situations described in this section.

The basic distinction employed under the Sales and Use Tax Law in distinguishing between service (nontaxable) and sale (taxable) transactions is set forth in our Regulation 1501, “Service Enterprises Generally”, copy enclosed. In determining whether a particular transaction involves the sale of tangible personal property or the transfer of tangible personal property incidental to the performance of the service, we look to the true object of the contract; that is, we ask, is the real object sought by the buyer the service per se or the product produced by the service? If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred.

Where a customer of a service bureau furnishes input data to a service bureau, asks that the data be processed (“develop new information”), and requests that the output data be furnished in a particular form (for example, on microfilm or on photorecording paper), the “real object” sought by the customer, under our traditional test, is probably the physical property produced as a result of the processing service. Accordingly, under this test, where output data is produced in a particular form at the request of the customer, the entire receipts of the bureau under the contract would be subject to the tax. Both the receipts attributable to “processing” and the receipts attributable to producing the output in a specialized form would be taxable. Our traditional test has been modified, however, in regard to computer “processing contracts” in recognition that the “real object” of those “processing contracts” which call for the output to be produced in a specialized form is probably best characterized as a “mixed” object and that it would be inappropriate to apply our general test to those kinds of contracts. Accordingly, Section II-B(4) states a middle or compromise position. Where data is transferred to microfilm in an on-line operations (and new information is developed), tax will not apply as the real object sought by the client is deemed to be a service. Where data is transferred to microfilm in an offline operation, the receipts for microfilming are subject to tax.

Under this present interpretation, it follows that if the service bureau cannot identify the portion of its charge to its customer attributable to this taxable portion of the “processing contract”, all the receipts from the contract are includable in the measure of the sales tax liability of the bureau.

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- (3) “In the same example as above, if the service bureau charges an additional amount for reproducing the four copies on the C.F.P., we feel this additional charge would be taxable.”

We agree, although as suggested before we see no analytical difference, under the bulletin, between the situation where the bureau does make an “additional charge” and the situation where the bureau does not make a separate “additional charge”.

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If we may clarify our position on this matter further, please feel free to contact this office directly.

Very truly yours,

Gary J. Jugum
Assistant Tax Counsel

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