



STATE BOARD OF EQUALIZATION

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Executive Director

November 24, 1997

Ms. M--- R---
Ms. D--- M---
S--- P--- L---
XXX --- ---
---, California XXXXX

Re: Internet Transmission Charges

Dear Mss. R--- & M---:

This is in response to your October 7, 1997 letter asking whether your vendor may collect tax reimbursement for its charges for cataloging records via the Internet.

You state:

“The S--- and B--- P--- L--- outsource the processing and cataloging of library materials from the same vendor, B--- C--- of [city], PA., from whom we purchase most of our books. We are charged sales tax on the books, the processing (plastic covering, barcoding, property stamping, labeling of books and other materials), and for the Internet transmission of the cataloging records for these materials into our consortium database.”

To facilitate our response, you provided us with a copy of the cataloging service agreement with your vendor and a sample billing invoice.

Discussion

California imposes a sales tax on a retailer California imposes a sales tax on a retailer’s gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.)¹ When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use or other consumption of that property in California. (Rev. & Tax. Code §§ 6201,

¹ This tax is imposed on the retailer who may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code § 1656.1; Reg. 1700(a).)

6401.)² Taxable gross receipts or sales price generally include all amounts received with respect to the sale, with no deduction for the cost of materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code §§ 6011, 6012.) Gross receipts or sales price do not include charges for software or information transferred solely by remote telecommunications (e.g., modem or e-mail) where the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. (See Reg. 1502(f)(1)D); BTLG Annot. 515.0064 (12/8/94).)

We understand that your vendor separately states a charge for both the sale (and corresponding processing) of books as well as a charge for the transmission of cataloging records via the Internet. Under these facts, we regard your vendor as selling tangible personal property (i.e., the books and processing) as well as the providing of cataloging information solely through electronic transmission. This means that tax applies to your vendor's charges for the books (or any other tangible personal property it transfers) and processing it performs, but not to its charges for the cataloging of records provided this information is transmitted solely through the Internet and you do not receive any tangible personal property (such as a courtesy "hard copy") as part of the transaction.

You further ask how you should obtain a refund of the taxes paid for Internet transmissions. We assume that your company paid use tax (and not sales tax reimbursement) to your vendor since the vendor is located outside California and the sale of its property to you probably occurred outside this state. If so, you may file a claim for refund directly with this Agency or contact your vendor for a refund.³ Any such claim may be submitted to the Board in letter form (see Rev. & Tax. Code § 6904) and should specify the amount of the claim, the relevant dates, the basis for the claim, and be accompanied by a copy of this letter. Please note, however, that claims for refunds must be made within three (3) years from the last day of the month following the close of the quarterly period for which the overpayment was made. (Rev. & Tax. Code § 6902(a)(1).) Any such claim should be sent to:

Board of Equalization
450 N Street, MIC: 39
P.O. Box 942879
Sacramento, CA 94279-0039
ATTN: Refunds Section

We hope this answers your questions. If you have any further questions, please write again.

² This tax is imposed on the person actually storing, using, or otherwise consuming the property. (Rev. & Tax. Code § 6202.) A retailer engaged in business inside this state is required to collect this tax from its customers and remit it to this Board. (Rev. & Tax. Code §§ 6202, 6203.)

³ If the transaction instead is subject to sales tax, you must collect the excess tax reimbursement payments directly from your vendor and the vendor may file a claim for refund with this Agency. In a use tax situation, the tax is imposed directly on you thereby entitling you file a claim for refund directly with this Agency. In a sales tax situation, the tax is imposed on the retailer (who collects sales tax reimbursement from you) who is the only person that may file a claim for refund with this Agency.

Ms. M--- R---

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November 24, 1997
120.0115.800

Sincerely,

Warren L. Astleford
Senior Tax Counsel

WLA:cl

cc: --- --- District Administrator (--)