


STATE BOARD OF EQUALIZATION

LEGAL DIVISION - MIC: 82
 450 N STREET, SACRAMENTO, CALIFORNIA
 (P. O. BOX 942879, SACRAMENTO, CA 94279-0082)
 TELEPHONE: (916) 324-2655
 FAX: (916) 323-3387

JOHAN KLEHS
 First District, Hayward

DEAN F. ANDAL
 Second District, Stockton

ERNEST J. DRONENBURG, JR.
 Third District, San Diego

BRAD SHERMAN
 Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

BURTON W. OLIVER
Executive Director

October 23, 1995

Mr. G--- S. B---, U--- Counsel
 The C--- S--- U---
 XXX --- ---
 --- ---, CA XXXXX-XXXX

Re: Sales Tax Liability--Library Services

Dear Mr. B---r:

This is in response to your letter dated June 30, 1995 regarding the application of sales and use tax to accessing on-line databases.

You state:

“C--- libraries ‘subscribe’ to several online services which provide information used by students and faculty to support instructional programs and research. One type of service is ‘bibliographic’ only; *i.e.*, it provides only citations to articles and publications pertinent to the topic researched. In addition to bibliographic citations, another type of service provides the full text of requested articles, which are transmitted online in electronic format. Information obtained from both of these types of services may be scanned on screen by library patrons, downloaded to floppy disks, or printed out locally at the discretion of the patron.

“Access to such online databases would appear to constitute on-demand services which yield only information, as opposed to tangible goods. As such, and inasmuch as they involve transfers by remote telecommunications from the seller’s place of business, it would appear that, pursuant to Regulation 1502 of the Sales and Use Tax Regulations, C--- libraries are not required to pay sales or use taxes on those services.

“As some C--- vendors are nevertheless charging for these services, I would appreciate clarification of C---’s obligations under the tax code, if any.”

California sales tax is imposed upon a retailer's retail sale of tangible personal property in California. (Rev. & Tax. Code § 6051.) Alternatively, use tax is imposed upon the use of tangible personal property purchased from a retailer for use in California. (Rev. & Tax. Code §§ 6201, 6401.) For purposes of the California Sales and Use Tax Law, "sale" and "purchase" include the transfer of title or possession of tangible personal property for a consideration. (Rev. & Tax. Code §§ 6006(a), 6010(a).) Those terms also include the fabrication of tangible personal property for a consideration for consumers who furnish either directly or indirectly the property used in the fabrication. (Rev. & Tax. Code §§ 6006(b), 6010(b).)

When an amount represented by a person as constituting reimbursement for sales tax is computed upon an amount that is not taxable and is actually paid by the customer to that person, the amount so paid is excess tax reimbursement. (Sales and Use Tax Reg. 1700(b)(1).) Such amounts must be refunded to the customer or remitted to the state.

Our understanding is that the database operator provides electrical signals which contain the information sought by you, and it transfers no tangible personal property and performs no fabrication of tangible personal property supplied by you. Therefore, no sale of tangible personal property occurs and no sales or use tax applies. (This conclusion would not apply if the vendors also provided you hard copies or other tangible personal property such as storage media.)

Any amounts that your vendors have collected from you as "sales tax" on transactions which are not subject to tax as discussed above constitute excess tax reimbursement that should be refunded to you. We suggest you provide a copy of this letter to the vendors in question. If they have further questions regarding the application of tax to their activities, they may write us directly.

Yours very truly,

Anthony I. Picciano
Staff Counsel

AIP:cl

cc: Torrance District Administrator