

*CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE*

**M e m o r a n d u m**

To: Mr. Robert Tucker  
Audit Evaluation & Planning Sec. - MIC:40

Date: August 23, 1993

From: Ronald L. Dick  
Legal Division - MIC:82

Subject: REDACTED TEXT Tutoring Services - No Permit

This is in reply to your June 23, 1992 memorandum regarding the application of sales tax to charges by REDACTED TEXT Tutoring Services for word processing.

You note that the final product which REDACTED TEXT provides to its customers is a copy of the typed document on diskette. Occasionally, REDACTED TEXT provides a copy of the information on paper as well as on the diskette. You asked whether sales tax applies to REDACTED TEXT's charge for the product of the word processing when the product is transferred on a diskette.

No, Sales and Use Tax Regulation 1502, Computers, Programs, and Data Processing, provides at subdivision (c)(4) that charges for the transfer of computer-generated output are subject to tax where the true object of the contract is the output and not the services rendered in producing the output. Examples include art work, graphics and designs. On the other hand, when the true object of the contract is the service rendered, tax does not apply to the charge. As you noted, an August 26, 1986 opinion from the legal staff concluded that charges for word processing were subject to tax when the product was delivered to the customer on magnetic disc as storage media. That opinion was issued before Regulation 1502 was amended to add the present subdivision (c)(4) noted above.

You also asked whether tax applies to a charge for one of either a diskette or a hard copy if REDACTED TEXT provides both to the customer. We believe that, if REDACTED TEXT's contract with its customers requires REDACTED TEXT to initially provide the information in the two forms, a diskette and a hard copy, the charge is nontaxable. REDACTED TEXT is the consumer of, and tax applies to the sale to REDACTED TEXT of, the tangible personal property which REDACTED TEXT transfers to the customer incidental to the service. On the other hand, if REDACTED TEXT's contract requires it to produce only one or the other; that is, a diskette or a hard copy, REDACTED TEXT's sale of another copy, either in the same form

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or in the other form, is a sale of tangible personal property to which sale tax applies.

REDACTED TEXT's May 15, 1993 letter suggests that the tangible personal property which REDACTED TEXT provides to its customers includes illustrations. REDACTED TEXT's charges for the output are nontaxable if the output consists only of word processing or composed type. (Sales and Use Tax Regs. 1502.1, Word Processing subd. (a); 1541, Printing and Related Arts, subd. (f)(3).) On the other hand, when the output is a combination of composed type and illustrations, tax applies to the total charge attributable to pages which contain illustrations (Sales and Use Tax Reg. 1541, subd. (f)(4) and (5).)

RLD:plh

Tucker.mem