

**M e m o r a n d u m****120.1800** □

To: Mr. Wolfgang Liebelt  
San Francisco (Compliance)

Date: May 9, 1991

From: Victoria Lani Arena  
Tax Counsel

Subject: [B]  
(No permit number)

This is in response to your memorandum of December 31, 1990 inquiring as to the taxability of letters to mythical characters.

Facts

You described the following facts:

The taxpayer plans to produce response letters to send to children who write to mythical characters. Each letter will be comprised of both a section of original text and a section of text which will be generated by assembling the appropriate paragraphs from a pre-existing paragraph library. Some of the pre-existing paragraphs will be modified slightly to insert variable information to personalize them. The taxpayer's pre-existing database will also include illustrations to be incorporated into each letter.

Word Processing Charges

Under Revenue and Taxation Code Section 6006, "sale" is defined to mean and include: "(f) [a] transfer for a consideration of the title...[to] tangible personal property which has been ... printed to the special order of the customer ...."

Sales and Use Tax Regulation 1502.1(a) sets forth rules regarding the taxability of word processing charges. The second paragraph of the regulation provides:

Tax applies to charges for producing multiple copies of letters, manuscripts, or other documents using word processing equipment. Multiple copies include form letters produced with a slight variation which personalize essentially the same letter. Tax applies to the entire charge without deduction for charges for setting

up the machine, keyboarding, or assembling the material. Charges for providing additional copies are subject to tax regardless of whether the original was prepared using a typewriter or word processing equipment and regardless of whether the copies are produced by computers, word processors, copying machines, or other methods.

Subparagraph (b)(3) of the regulation on the other hand, provides that the assembly of a final product from an attorney's paragraph library is nontaxable. In our opinion, this exemption applies where the underlying transaction is the provision of professional services. In the present case, the taxpayer is not rendering professional services nor is she transcribing the professional services of someone else.

Although not completely dispositive of this matter, further authority for taxing the response letters is found in Regulation 1502 which provides an exemption covering the "processing of customer-furnished information". Subsection (d)(5)(A) of the regulation defines this term as follows:

(A) "Processing of customer-furnished information" means the developing of original information from data furnished by the customer. Examples of automatic data processing processes which result in original information are summarizing, computing, extracting, sorting, and sequencing. Such processes also include the updating of a continuous file of information maintained by the customer with the data processing firm.

Subsection (d)(5)(B) of the regulation provides:

(B) "Processing of customer-furnished information" does not include: (1) an agreement providing solely for the reformatting of data or for the preparation of a proof listing or the performance of an edit routine or other pre-processing, (2) the using of a computer as a mere printing instrument, as in the preparation of personalized computer-printed letters, (3) the mere converting of data from one medium to another, (4) an agreement under which a person undertakes to prepare artwork, drawings, illustrations or other graphic material whether the graphic material is transferred on storage media or otherwise. However, graphic material furnished incidentally to the performance of a service is not subject to tax. For example, graphics furnished in connection with the performance of architectural, engineering, accounting or similar professional services are not subject to tax. [Emphasis Added.]

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In our opinion, the taxpayer's response letters are taxable as "multiple copies" under Regulation 1502.1(a). Furthermore, they do not qualify for the exemption as "processing of customer-furnished information" under Regulation 1502.

If you have any other questions, please contact me.

VLA:es  
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cc: Mr. Jim Speed – BH (Auditing)