

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

November 29, 1989

Mr. [M]
Executive Director
[C]
XXXX --- ---,
--- ---, CA XXXXX

[C]
(---) – S- -- XX-XXXXXX
processing of customer-furnished information – maintenance
of library data base

Dear Mr. [M]:

In your September 20, 1989 letter to the Board's legal staff, you request our opinion on the application of California sales or use tax to a contract entitled "California Data Base for Serials" (also referred to as CDB-S) between [C] and the California State Library. You request our opinion under the provisions of Revenue and Taxation Code Section 6596 (taxpayer reliance on Board written advice). In your letter, you relate that [C] is a not-for-profit California government agency. Mr. [J], of [P], CPAs, your representatives, informs me that [C] is a joint powers government agency formed under the provisions of Government Code Section 6500 et seq., among the California State Library, the County of Los Angeles, the Regents of the University of California, and other government entities.

The contract calls for [C] to continuously maintain and update a data base owned by the California State Library. The contract also provides for [C] to develop and implement custom software to improve the usefulness and availability of the data base. The contract also requires [C] to expand the data base to encompass the conversion of the records to a new national standard library format.

You write:

“The California State Board of Equalization recently completed an audit of [C] for the period October 31, 1985 to December 31, 1988.

The Notice of Determination was dated July 26, 1989. During this field audit at [C], the CDB-S contract was reviewed and determined to be a contract for services, the proceeds of which were not subject to sales tax. However, since the contract is renewed on an annual basis we wish to have a determination as to the application of sales or use tax to the contract covering the period October 1, 1989 to September 30, 1990, and each subsequent annual renewal of the contract.”

You note that you have requested the California State Library to remit sales tax on this contract for the period January 1, 1989 to September 30, 1989, and you ask us to advise you if that collection of tax is in error.

Your contention is that this contract is exempt from sales and use tax under the Board's Sales and Use Tax Regulation 1502(d)(5) because it constitutes the service of processing customer-furnished information by a data processing firm. You contend that the true object of this contract is for [C] to provide the service of changing the information included in the data base, and not the tangible output of the product which may result from accessing the data base (e.g. storage media containing the data base). Your opinion is that [C] is the consumer of tangible personal property which it uses in performing this contract, such as cards, forms, etc. You also contend that [C] is not subject to tax on services rendered in making custom modifications to the data base software programs, when [C] separately states these charges on its billing invoice, pursuant to the provisions of Regulation 1502(f)(2)(B).

There are other provisions of the contract which require [C] to publish, market, and distribute the California Union List of Periodicals, and also to publish training guides for [C] members to efficiently access the data base. You understand that [C] is the retailer of these items and that tax applies to its sales to its clients.

Opinion

We agree with your contention that under Regulation 1502(d)(5), [C] is providing a nontaxable service of processing customer-furnished information when it maintains and updates a continuous file of information in the data base owned by the California State Library, regardless of whether [C] transfers the updated data base to the State Library on tangible storage media. We also agree that when [C] makes custom modifications to computer programs necessary to access the data base, and separately states these charges for the custom modifications on its invoices to the California State Library, no tax applies to those charges, under Regulation 1502(f)(2). [C] is the consumer of tangible property it purchases in order to provide these processing and programming services, and tax applies to those purchases. You should not charge the California State Library tax on these services, and if you have collected tax on nontaxable transactions, you may file a written

claim for refund with the Board's Audit Review and Refund Unit, P.O. Box 942879, Sacramento, CA 94279-0001, Telephone (916) 322-3040.

We also agree with your view that you are the retailer of lists and training guides which you sell to your clients. Finally, we agree that this response to your September 20, 1989 letter constitutes written advice to the taxpayer within the meaning of Section 6596. Accordingly, you may rely on this advice in reporting and paying the appropriate amount of sales or use tax in your returns filed with the Board.

Sincerely,

John Abbott
Senior Tax Counsel

JA:jb