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March 22, 1994

BURTON W. OLIVER
 Executive Director

Mr. G--- N---
 The E---
 P. O. Box XXXXX
 --- ---, CA XXXXX

Re: Application of Tax to Wedding Functions
SR --- XX-XXXXXX-010

Dear Mr. N---:

This is in response to your letter dated January 12, 1994 in which you request clarification as to the application of tax to your business activities. You serve as a wedding consultant/planner, making all of the arrangements necessary for a wedding. In your letter, you list 24 specific areas of your business for which you would like clarification as to whether sales tax applies or not. Some of the areas you would like addressed were at issue in a previous audit of your business. These issues, related to the application of tax to property provided by you to your clients and whether you were acting as an agent of your clients, were presented to Mr. Wayne Philpot at an Appeals conference in July 1993.

The Decision and Recommendation written by Mr. Philpot concluded that there was no agency relationship established and that you were acquiring and re-selling the property. Due to the conclusions of that Decision and Recommendation, you request clarification as to the application of tax to the activities of your business. Before addressing each item, a brief explanation of the Sales and Use Tax Law is provided. As pointed out in the Decision and Recommendation, the application of tax to your business activities will in part depend upon the agreement between you and your clients.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property occurring in California. The sales tax is imposed upon the retailer, but the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1)

You indicate that you have been acting as an "agent" for your clients when acquiring or arranging for the items necessary. As related in Mr. Philpot's Decision and Recommendation, the Sales and Use Tax Law does not specifically set forth the rules applicable to an agency relationship such as the one you describe. However, Regulation 1540 (relating to "Advertising Agencies, Commercial Artists, and Designers" - copy enclosed), does provide the requirements that must be met to establish that a particular acquisition of property was made as an agent for a principal. To establish that a particular acquisition was made as agent for its client, (i) the person must clearly disclose to the supplier the name of the client for whom it is acting as agent, (ii) the person must obtain, prior to the acquisition, and retain written evidence of agent status with the client, and (iii) the price billed to the client, exclusive of the agency fee, must be the same as the amount paid to the supplier.

The contract which the customer enters into with your business states that you will be acting as an agent for the client and this contract would serve as written evidence of the agent status (requirement (ii) above). However, the contract does not provide information as to the first and last requirements listed above. For purposes of this letter (and to provide a more thorough response), I will assume that you are not acting as an agent for the client.

If you were acting as an agent for your client in acquiring tangible personal property, the supplier would be regarded as selling directly to your client. Since you will not be an agent of your client when acquiring the tangible personal property, then you will be considered the purchaser of the property with respect to the supplier. If you sell that property to your client prior to any use, you will be acquiring the property for resale and you may issue resale certificates meeting the requirements of Regulation 1668 (copy enclosed) to your vendors.

Nevada Weddings

Under the Sales and Use Tax Law, unless the parties agree that title is to pass earlier, the sale of tangible personal property occurs at the time and place at which the retailer completes performance with reference to the physical delivery of the property. Therefore, the sale of property you provide to your clients occurs at the event. For weddings and events in Nevada, the property would be sold in Nevada and thus would not be subject to California sales tax. However, if the property is shipped via common carrier from California, then the sale is considered to be complete in California subject to California sales tax.

Ministers

A minister is usually considered to be performing a service and as such, the charges for a minister are not subject to tax.

Caterers

Subdivision (h) of Regulation 1603 (copy enclosed) addresses the application of tax to sales by caterers. A caterer is defined as a person engaged in the business of serving meals, food and drinks on the premises of the customer.

Tax applies to the entire charges made by caterers for serving meals, food, and drinks inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables etc., used in connection with serving meals, and for the labor of serving the meals, whether performed by the caterer, the caterer's employees or subcontractors. Tax applies to charges made by caterers for preparing and serving meals and drinks even if the food is not provided by the caterers. (Regulation 1603 (h).)

A caterer cannot issue a resale certificate for the purchase or lease of items it uses in its catering, such as dishes, silverware, glasses, chairs, and tables because the caterer does not sell or rent such items to its customers. Rather, the caterer uses these items in connection with its sale of the meals. On the other hand, a caterer may issue a resale certificate to a rental company to lease tangible personal property which the caterer does not use itself but rather subleases to its clients when the clients have specifically ordered such property and the property is not customarily provided in connection with the preparation of food. (In such cases, the caterer would be required to collect use tax from the client measured by rentals payable.) Such property might be lighting for guest speakers (as opposed to lighting for eating areas), sound systems, or video systems.

Several annotations address tax issues raised by caterers such as you. Sales and Use Tax Annotation 550.0855, which applies to rentals of facilities, states :

"If a caterer contracts with a facility (room, auditorium, yacht, etc.) owner for the use of the facility for the serving of food by the caterer to the caterer's client, the caterer is considered the equivalent of a restaurant serving food, as opposed to a caterer serving food in a client's facility. Therefore, such a caterer should not be considered as renting props, costumes, displays, and flowers, to the client for the event. The caterer may not purchase or lease such items for resale and may not deduct the amount of the charge for such items related to the service of the food from the caterer's taxable gross receipts"

Bartenders/Servers

Sales and Use Tax Annotation 550.0860 states in relevant part:

"Charges for bartenders, waitresses, and cooks, hired by a caterer to cater a meal, are includible in the measure of tax, even though these personnel were determined by the Employment Development Department to be independent contractors

rather than employees. Their status as independent employees is not sufficient to exempt charges the caterer makes for their services in connection with the serving of meals. Tax applies to the entire charges made by caterers for serving meals: As long as the caterer's customers are billed for the labor, they are a part of the caterer's gross receipts. (10/17/66)."

Florists

Charges for floral arrangements are subject to sales tax.

Photographer/Videographer

A photographer and videographer are selling tangible personal property, either in the form of photos or a video and thus, the charges by photographers and videographers are subject to sales tax.

Wedding Cakes

The rules discussed above as to caterers apply similarly to the providing of the wedding cake. Under Revenue and Taxation Code section 6006, a "sale" includes "the furnishing, preparing, or **servicing** for a consideration of food, meals, or drinks". (Rev. & Tax. Code § 6006(d).) (Emphasis added.)

Annotation 295.0120 (8/4/67) states that the opening and serving of customer-furnished champagne is a sale and as such charges for this are includible in taxable gross receipts. Similarly, charges for the cutting and serving of cake are also subject to sales tax.

Limousines

Except as explained below, a rental (lease) of tangible personal property is a continuing sale and purchase, and the lessor must collect and pay use tax measured by the rental payments. (Rev. & Tax Code §§ 6006(g), 6010(e), 6006.1 and 6010.1). However, certain types of leases are not treated as "sales". Revenue and Taxation Code sections 6006(g)(5) and 6010(e)(5) state that a "sale" and "purchase" do not include a lease of tangible personal property leased in substantially the same form as acquired by the lessor as to which the lessor has paid use tax or sales tax reimbursement measured by the purchase price of the property. Under Sales and Use Tax Regulation 1660 (c)(2), no sales or use tax is due with respect to the rentals charged for such leases.

If you are not considered the agent of your client when arranging for the limousines, then the limousine company is leasing to you and you may be subleasing to your client. If the lease is not subject to use tax because the limousine company paid tax on purchase price and the limousine is leased in substantially the same form as acquired, then your sub-lease to your client

is also not subject to sales tax. (Reg. 1660(c)(5). If, instead, you pay use tax on the rentals payable to the limousine company, your sublease would again not be subject to tax. Otherwise, if you sublease the limousine, that sublease will be taxable.

Accommodations

When the accommodation charges relate to your sales of tangible personal property, they are subject to sales tax. Otherwise, they are not. For example, your charge for accommodations of staff who will serve meals must be included in the measure of tax for your sale of those meals. Your charge for accommodations of the entertainment staff is not subject to sales tax since the providing of entertainment is not the sale of tangible personal property.

Liquor (Provided by the Client)

When the client provides the liquor and you (or the caterer) hire bartenders, the bartending fees are subject to tax.

Non-Alcoholic Beverages

The rules discussed above in catering apply here as well. Charges for providing these drinks along with the rest of the meal are subject to tax.

Labor to Decorate

Revenue and Taxation Code section 6006 states that a "sale" includes the producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration.

Revenue and Taxation Code section 6012 states that "gross receipts" from the sale of tangible personal property include the cost of materials used, labor or service cost, or any other expense. The only labor charges excluded from gross receipts are those for labor or services used in installing or applying the property. You have not described the decorating that you do, so we cannot advise you as to whether any of your charge would be excluded from tax. We need more specific information to provide a more specific answer.

Formal Wear

I assume that by "formal wear" you are referring to the rental of tuxedos. The rental receipts for the formal wear are subject to tax unless the tuxedos are rented in substantially the same form as acquired and tax was paid on purchase price (or tax was paid on the prime lease and then subleased).

Restaurant Receptions

The discussion above as to caterers applies here. All charges related to the sale or service of the meal are subject to tax.

Agency Service Fee

As discussed above, if you are acquiring the items and then charging your client a fee for that acquisition when re-selling to the client, then the agency fee is included in the measure of tax.

Reception Hall Rentals

Your charge to your customers for the rented facilities is subject to sales tax when those facilities are regarded as an expense associated with your taxable sale of tangible personal property. When the rented facilities will be used solely to provide a location at which to serve meals to your customers, your charge to your customer for those facilities is subject to tax and may not be deducted from your taxable gross receipts. (Annotation 550.0260 (12/3/64).)

Musicians/Entertainers

Assuming these performers are not used in connection with the sale of any tangible personal property nor are they used in connection with the service of the food, amounts paid for these performers are not subject to tax.

Decorations

Sales of decorations are subject to tax.

Party Equipment Rentals

The leasing discussion (see Limousines above) applies to rentals of party equipment as well. Tax is due based upon the rental receipts unless tax was paid on the purchase price or on the prime lease and then subleased. Please note, however, that if you use such property in the service of meals, for example, you are not regarded as leasing to your client. Your charges to the client would be included in the measure of tax for the sale of the meals. You would not be entitled to acquire such property ex-tax for resale.

Delivery Fees

Revenue and Taxation Code section 6012 states that "gross receipts" includes the cost of transportation of the property. There is an exclusion for separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser. This exclusion does not apply if transportation is by facilities of the retailer unless delivery occurs after the sale. (Rev. & Tax. Code § 6012(c)(7).) (Reg. 1628, copy enclosed.)

Set-up/Tear-down labor

If these amounts are connected to the sale of the tangible personal property or the service of the meals, charges for set-up and tear-down are included in the measure of tax.

If you have any further questions, please do not hesitate to write again.

Sincerely,

Sukhwinder K. Dhanda
Staff Counsel

SKD:plh

Encls. - Regs. 1540, 1603, 1628 and 1668