

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6493

September 14, 1987

Mr. A--- F. H---
Director, Tax Planning and Research
P---, Inc.
World Headquarters
---, Connecticut XXXXX-XXXX

P---, Inc. – SY OH XX-XXXXXX
T---S--- D--- G---, Inc. (no permit)
Delivery service publication and computer program

Dear Mr. H---:

In your July 17, 1987 letter to Mr. Douglas D. Bell, Executive Secretary for the Board, which was referred to the legal staff for reply, you request an advisory opinion on behalf of P---, Inc. and its wholly owned subsidiary, T--- - S--- D--- G---, Inc. You ask whether subscription sales of the publication and services described below are subject to state and local sales and use tax. These business information services are designed to enable customers to maximize on-time delivery of time sensitive materials at minimum cost.

I have quoted below your descriptions of these publications and services, followed by our responses regarding how tax applies.

Question

“1. Initial Sales

“Petitioner #1 [P---] sells a publication which is published by petitioner #2 [T--- - S--- D--- G---]. Initial orders for this publication are placed with Petitioner #1 for a one year subscription, often as part of a commissionable sale of Petitioner #1’s other products. In addition, orders may be solicited independently by Petitioner #2 and shipped out of its office in Atlanta, Georgia. The subscription price is approximately \$250.00 per year.

“The publication contains a listing of overnight and second-day delivery services for about 400 national, regional and local carriers from the customer’s origin shipping city to each of several thousand destination cities. Information is provided on scheduled delivery times, rates, method of pickup, proof of delivery, refunds, insurance, tracing, phone numbers and other related items. The initial materials will also contain two separate sections providing information of interest to mailroom managers, personnel and other individuals responsible for handling mail. Outside advertising will account for less than 5 percent of the printed pages.

“On an initial order, a customer will receive a complete publication of the information described above. The publication is printed in a booklet-size, 3-ring loose-leaf binder. A slipcase is also shipped with the initial order.”

Answer. In order to qualify as an exempt periodical under Revenue and Taxation Code Section 6362, the various issues of a publication must be issued with the required frequency of average intervals not exceeding three months. Since the initial sales of this publication constitute sales of a single publication complete in itself, our opinion is that it is not one of a series of issues published with the required frequency, and is subject to sales or use tax. (Regulation 1590(a)(2)).

Question

2. Supplements
“The annual subscription price includes quarterly supplements of rate and/or service information which are published and shipped automatically to the customer. Each supplement will also provide materials updating the textual information contained in the initial pages and advising its subscribers of new developments of interest. For example, a supplement may contain shipping tips suggesting new ways the publication can be used to save money or may highlight a particular courier. These supplements are printed in the same format as the initial publication and can be inserted in the 3-ring binder as replacement pages or additions.”

Answer. Since the supplements are issued on a quarterly basis, these supplements meet the required frequency of publication of average intervals not exceeding three months. You do not indicate the advertising content (if any) of the supplements. If that advertising content does not exceed 90% of the printed area in more than half the issues, then the supplements will qualify as an exempt periodical under Regulation 1590(a)(2), since the supplements contain news or information of general interest to your subscribers.

Question

3. Renewals

“As discussed above, the publication and the quarterly supplements are sold to the customer on a one-year subscription basis. Renewal subscriptions may be received automatically by the customer if requested with the original order. Otherwise, renewals may be handled in one of two ways:

“A. Petitioner #1 will solicit and then bill the subscriber and notify Petitioner #2 which subscribers have renewed; Petitioner #2 will then ship from its Atlanta office the publication to the subscriber; or

“B. Petitioner #2 will solicit and then bill the subscriber directly and also ship from its Atlanta Office the publication directly to the subscriber.

“On renewal, the subscriber will receive a whole new insert of materials for placement on the 3-ring binder.”

Answer. Our response with regard to the renewal subscriptions is the same as our response with respect to questions 1 and 2 above. That is, the annual publication does not qualify as an exempt periodical, but the quarterly supplements do so qualify.

Question

4. Telephone Inquiry Service

“As part of its subscription price, a subscriber will also be provided with a toll-free telephone number which is maintained out of Atlanta. This telephone service will give the customer more specific information on routing from his origin shipping city or information on other shipping cities.

“In addition, Petitioner #1 and Petitioner #2 may provide a telecommunications service which will be sold independent of a subscription to the publication. A subscriber to this service could by telephone inquiry access information regarding U.S. postal rates as well as overnight courier services, rates etc.”

Answer. Sales or use tax applies to services which are a part of the sale of tangible personal property. (Rev. and Tax. Code Sections 6006(b)(1), 6010(b)(1)). Your telephone service is provided as a part of the taxable sales of your annual publication, and the subscriber does not have the option to acquire the annual publication without the telephone service. Our opinion is that tax applies to charges allocable to the telephone service included in the subscription price. However, since the telecommunications service which you may provide will be optional with your subscribers, this is not a service part of the sale of tangible personal property and is nontaxable.

Question

“Software Package

“Petitioner #2 may develop computer software in the form of a diskette which would be used in conjunction with Petitioner #1’s other products. The diskette would contain all the information contained in the publication regarding overnight and second-day delivery services discussed in (1) above. For example, the diskette could be inserted in an electronic mailing scale and after certain information is keyed in could advise the customer on the most economical courier service meeting the customer’s needs.”

Answer. Our opinion is that the computer software is subject to sales or use tax as the sale of a prewritten computer program. Even though the diskette contains all the information contained in the publication, nevertheless your customers will use the diskette in order to key in information and compute data regarding economical courier services. In our view, this constitutes a computer program, not merely a publication published on a diskette.

I enclose a copy of Regulation 1590 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Tax Counsel

JA:jb
Enclosure