



STATE BOARD OF EQUALIZATION

Attached are two copies of hearing report dated 3-20-70 which has been approved. This hearing was held in Sacramento on 11-20-69. Also attached are the work papers for the audit covering the period from 10-1-64 to 12-31-68.

March 25, 1970

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Gentlemen:

Reference is made to the November 20, 1969, hearing concerning your petition for redetermination received June 12, 1969, with respect to tax, interest and penalty assessed as a result of an audit for the period October 1, 1964, to December 31, 1968. At the hearing you questioned the inclusion of Items A through H in the taxable measure, gross receipts from sales of photocopies less credits allowed. It was your position that you were performing a nontaxable service rather than making taxable sales as defined in Sales and Use Tax Law section 6006.

You have described your business as follows:

- A. The major part consists of the pick-up and delivery of photocopies of police reports, medical records, hospital records, etc. You make no use of these photocopies. Your billing to a customer includes a charge which the vendor of the photocopies has made and which you have paid, pick-up and delivery charges, and telephone charges. The photocopies and a copy of the billing are then put into a folder and delivery is made.

In this regard, you note that amounts paid to law enforcement agencies for photocopies were excluded from the taxable measure but amounts paid to doctors and hospitals for photocopies were included therein. In both situations, pick-up and delivery charges were also included in the taxable measure, regardless of whether you made a use of the photocopies.

- B. The remainder consists of the actual reproduction of records at the business location where the records are kept or at your place of business. This reproduction is done with your equipment and materials for which you have previously paid sales tax reimbursement.

In this regard, you note that credit has been allowed for sales tax reimbursement which you have paid.

Upon the premise that you were performing a nontaxable service rather than making taxable sales, you have asserted that tax should not apply to amounts paid to doctors and hospitals for photocopies or to pick-up and delivery charges related to those photocopies in those cases where you made no use of the photocopies.

As you know, the question as to whether persons conducting businesses such as yours are performing services or making sales of tangible personal property has been decided by the board. In this regard, the board has concluded that the nature of such businesses is to reproduce, sell and deliver specific materials which have originally been recorded by other persons, and that persons engaged therein are making sales of tangible personal property under section 6006(f). That section defines "sale" to mean and include "a transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication." In so concluding, the board has upheld the position previously taken by the staff, namely, that photocopies constitute tangible personal property, and when furnished for a consideration, receipts there from are taxable.

Although the production of photocopies may involve some specialized services, this does not provide any basis for exemption where the services are performed in connection with the production of tangible personal property. This argument was expressly rejected in People v. Grazer, 138 Cal.App.2d 274, which dealt with the classification of X-ray pictures for sales tax purposes. There, the court concluded as follows:

"But the price charged for all taxable transfers is more often than not largely a charge for services rendered in connection with the tangible object transferred...."

Sales tax was held to apply to the retailer's entire charge for an X-ray picture and accompanying report. A similar result was reached in Albers v. State Board of Equalization, 237 Cal.App.2d 494, which dealt with the taxation of services of a commercial draftsman.

In view of the above, we must conclude that in producing, selling and delivering photocopies, you were making sales of tangible personal property under section 6006(f), and that receipts there from were taxable. We must also conclude that in paying doctors and hospitals for photocopies and then selling those photocopies and billing your customers for the charges you had paid, you were similarly making sales of tangible personal property under section 6006(f), and that the receipts there from were taxable to you. In effect, you were purchasing these photocopies for resale and reselling them to your customers.

Section 6012 provides that "gross receipts" mean the total amount of the sale price, including any services that are a part of the sale. It further provides that no deduction may be taken for the cost of the materials used, labor or service cost, or any other expense. Ruling 23 applies to photographers and Photostat producers and provides

that no deduction is allowable for such expenses as travel time, rental of equipment, salary and wages of assistants, etc., whether or not such expenses are itemized.

As the pick-up and delivery of photocopies were services which were part of your sales, and as receipts there from were not exempt under section 6012(g), these receipts were taxable under section 6012 and ruling 23. Since your sales of photocopies were taxable regardless of whether you produced the photocopies or purchased and resold them, your pick-up and delivery charges attributable to those sales were likewise taxable in both instances.

You also have asserted that tax should not apply to pick-up and delivery charges in those cases where the transfer of photocopies was a governmental act and was not subject to tax. As amounts paid for these photocopies were excluded from the taxable measure, so also should related pick-up and delivery charges be excluded there from.

We have taken the position that if the furnishing of photocopies of documents held by a governmental agency is made mandatory by statute or ordinance, the transfer of such photocopies is a governmental act and tax does not apply (Cal. Tax Serv. Anno. No. 1856.06). Thus, mandatory sales of photocopies by law enforcement agencies to persons authorized to receive them, for example, persons so designated in Cal. Veh. Code section 20012, are not subject to tax. In cases where you were not authorized to purchase such photocopies in your own behalf, any purchases of such photocopies by you must necessarily have been made in behalf of authorized persons. Presumably, it was upon this basis that amounts paid to law enforcement agencies for photocopies required to be made available by were excluded from the taxable measure. As you received such photocopies in behalf of authorized persons rather than purchasing and reselling them, we would agree that any related pick-up and delivery charges should also be excluded from the taxable measure. Such charges were not taxable as charges for services that were part of-your sales.

You also asserted that in 1964, prior to beginning business, and again in 1968, you were informed and/or led to believe by representatives of the board that you would not be regarded as making taxable sales. Thus, it was your position that it was unfair to regard you as the seller of tangible personal property during the audit period and to impose the tax, interest and penalty set forth in the Notice of Determination. Assuming that the information or impressions given on those occasions were incorrect, however, tax if due under the law, would still apply as a result of *Market Street Railway v. State Board of Equalization*, 137 Cal.App.2d 57.

With regard to the interest assessed, the law provides no relief from interest under these circumstances.

With regard to the penalty assessed, the penalty for failure to file returns attached mandatorily under section 6511. The board may provide relief from this penalty under section 6592, however, and in this regard, you have filed a statement under penalty of

perjury setting forth the facts upon which you base your claim for relief. Your statement will be submitted to the board for its consideration.

Accordingly, it will be our recommendation to the board that tax upon any charges for the pick-up and delivery of photocopies required to be made available by law and which you were not authorized to receive in your own behalf be eliminated from the determination. In all other respects, it will be our recommendation that the tax be redetermined without adjustment. If we do not hear from you within 30 days from the date of this letter, we shall assume that you concur in our recommendation, and we shall present the matter to the board for final action. At that time the board will consider your request for relief from penalty. In this event, you will receive official notice of the board's action in due course. In the event that you do not concur in this recommendation and you desire an oral hearing before the board, please notify Mr. J. L. Martin, within the 30-day period and he will inform you of the time and place of hearing.

Very truly yours,

J. Kenneth McManigal
Tax Counsel