

**STATE BOARD OF EQUALIZATION**

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June 5, 1991

Mr. P--- H. S---
M--- Lithographers
XXX --- ---Street
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. S---:

This is reply to your February 5, 1991 letter regarding whether you should charge sales tax under certain circumstances you provided.

Before answering your specific questions, we note that the sales tax is imposed upon retailers at the applicable rate of the gross receipts of the retailer's retail sales of tangible personal property in this state. (Rev. & Tax. Code § 6051.) Whether or not you collect reimbursement for the tax is a matter of contract between you and the customer. (Civil Code § 1656.1.) You provided the following situations, and our response will follow each situation you described.

“1) A customer brings in some paper of chipboard for us to cut. We cut it and give it back to him and charge him for the cutting. We provide the service, he provides the material. I have been told that there is no tax due as nothing has been manufactured. Our cutting charge includes labor and overhead and profit.”

Revenue and Taxation Code section 6006, subdivision (b), defines “sale” to include the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting. Producing, fabricating, and processing include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. (Sales and Use Tax Reg. 1526, Producing, Fabricating and Processing Property Furnished by Consumers – General Rules.) When you make a charge for cutting paper or chipboard for a customer who is a consumer, your entire charge is subject to sales tax even though you do not provide the paper to the customer.

“2. Same as #1 above except we order the paper, mark it up, and charge tax on the marked up paper. Do we also charge tax on the cutting? The only difference is that we provide the paper instead of the customer.”

Yes, if you make a retail sale of paper, tax applies to your total gross receipts from the sale including you charge for cutting the paper. Tax applies to charges for services that are a part of the retail sale of tangible personal property. (Rev. & Tax. Code § 6012, subd. (a)(2), (b)(1).)

“3) A customer brings in a job, printed elsewhere, for us to cut and fold. We fold it, box it and he takes it away. Do we charge tax for folding?”

Yes, sales tax applies to your charge for cutting and folding the customer’s paper. Your charge for folding would be nontaxable where your folding is only for the purpose of mailing, provided you separately state such charges on invoices and in your accounting records. (Reg. 1541, Printing and Related Arts, subd. (c).)

“4) Same as #3 but customer tells us he is producing this brochure (actually it is a map of the area with various business card sized advertisements and single line listings for various businesses in the area) as a free promotional service. He does not charge anyone any money for the map. He charges people money for their ads but does not collect tax as, he says, there is no tax on ad charges. He mails 10% of these through the post office bulk mail and delivers the rest himself. Do we charge tax?”

The application of tax to your charge for fabrication of the brochure is separate and distinct from the application of tax to your customer’s charge for the advertisements in the brochure. Based on the information you provided, it appears that the brochure provided by your customer is not an exempt newspaper or periodical. (Reg. 1590, Newspapers and Periodicals.) Accordingly, tax applies to your charge for the cutting and folding except that the charge for folding is nontaxable when the folding is only for the purpose of mailing as noted in response to situation number 3) above.

“5) Same situation as #4 but we do the whole job – the customer supplies the camera ready copy. We order the paper, print, fold, etc. Do we charge tax? (NOTE: in this case, the customer claims according to his CPA, he is not required to pay tax)”

Again, unless your sale qualifies as an exempt sale of a newspaper or periodical, sales tax applies to your charge. Since the customer’s CPA claims that tax does not apply to your charge, we suggest that you ascertain the reason the CPA believes that tax should not apply.

We note that there is an exemption from sales tax for the sale of printed sales messages which are printed to the special order of the purchaser; mailed or delivered by the seller, the seller’s agent, or a mailing house acting as the agent for the purchaser, through the United States

Postal Service or by common carrier; and received by any other person at no cost to that person who becomes the owner of the printed material. See Sales and Use Tax Regulation 1541.5, Printed Sales Messages. It does not appear that the exemption applies to your sale under the facts you provided, because you deliver the printed material to the customer.

“6) A customer asks us to do a job. We hire a free lance artist to design, layout, type set (or to buy out the type) paste up and present us with camera ready copy. We pay the artist his fee, do the job and add our art cost and mark up to the job price, and bill the customer. We charge the customer tax on the total. Does the artist charge us tax when he bills us for his work?”

The application of tax depends upon the nature of the camera-ready copy which the artist provides to you. If the camera-ready copy consists of type matter only, tax does not apply to the charge. If the camera-ready copy consists of type matter combined with any form of illustrations, the total charge is subject to tax without any deduction on account of the cost of the typography. (Sales and Use Tax Reg. 1541, subds. (f)(3), (f)(5).)

We hope this answers your questions; however, if you need further information, feel free to write directly to me. We are enclosing a copy of State Board of Equalization Pamphlet No. 37, Tax Tips – The Graphics Arts Industry, for your further information.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.