

(916) 445-6450

August 23, 1990

REDACTED TEXT

Dear Ms. REDACTED TEXT:

Your May 17, 1990 letter to Tax Counsel Don P. Chairez regarding the application of sales tax to your preparation and sale of water quality reports has been referred to me for reply.

You note that Mr. Chairez made an erroneous assumption that your \$50.00 set-up fee is for typesetting. You describe the following work you perform for the fee:

“1) We assist the client in gathering his lab analyses. Many of the clients were at a loss in this area because this reporting is a brand new regulation. Additionally, we advised clients as to what future analyses should be performed in order to comply with future annual reports.

“2) We intercede and deal with all involved regulatory agencies at the county and state level on the behalf of the client. This involves clarifying requirements and attaining approval for the annual report for each individual client.

“3) After distribution of the annual reports, we provide proof of distribution to the state or county regulatory agencies for our clients.”

As Mr. Chairez noted in his May 10 letter to you, the measure of sales tax on your sale of the pamphlets embodying the water quality report includes your charge for any services that are a part of the sale. Mr. Chairez quoted a portion of Business Taxes Law Guide Annotation 295.1690, which states in full:

“ ‘Services that are a part of the sale’ include any the seller must perform in order to produce and sell the property, or for which the purchaser must pay as a condition of the purchase and/or functional use of the property, even where such services might not appear to directly relate to production or sale costs. Thus, charges described by a seller of catalogs as for preproduction research and consultation services and for postproduction merchandising consultation services are part of the taxable sales price of the catalogs, whether separately stated or not. The first “service” is a necessary prelude to catalog production; and the second is furnished only to catalog purchasers who are required to pay for the service when they purchase the catalogs, whether or not it is desired or used.”

Although, as you note, the services you provide for the set-up fee may not be necessary to the actual printing and distribution of the pamphlet, the services are ones for which the purchaser must pay as a condition of the purchase of the pamphlets. We believe that the services you perform for the \$50.00 set-up fee are necessarily services that are a part of the sale, and the fee is includable in the gross receipts of your sale of the pamphlets.

You also appear to be questioning Mr. Chairez's conclusion that sales tax applies to at least \$0.65 of each pamphlet that you sell for a charge that, including charges for mailing, totals \$1.00. We reiterate that, unless the mailing charges are separately stated in your invoices and your accounting records, the charges are includable in the taxable gross receipts of your sale. (Cf. Sales and Use Tax Reg. 1541, Printing and Related Arts, subd. (c).) Further, Mr. Chairez based his conclusion, that the taxable portion of your charge is \$0.65, on your calculations of the breakdown of your charge. We do not know, of course, whether that breakdown is accurate; therefore, you should be able to substantiate your nontaxable charge for mailing services for audit purposes. If an audit or your records discloses that the taxable gross receipts of your sales are more than you have reported, you will be liable for tax on the difference. Further, since sales tax is imposed upon the retailer, you may be unable to collect reimbursement for the additional tax from your customers.

We hope this answers your question; however, if you need further information, feel free to write directly to me.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

bc: Sacramento District Administrator