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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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April 15, 1992

REDACTED TEXT

Dear REDACTED TEXT:

This is in reply to your March 2, 1992 letter regarding the application of sales tax to charges by your client under the following facts you provided:

“A local company is in the business of handling political campaigns for candidates and issues in California election contests. The company provides consulting and planning services in setting up the campaign and deals with printers in the procurement of brochures and mailing pieces. The company employs an artist who prepares preliminary art, some final mechanical art, and some computer design that is used in the production of brochures.

“The candidate signs a contract indicating that the company is an agent in the purchase of brochures and other materials. Sales tax is charged to the company by printers and other vendors on all outside purchase except those that qualify as printed sales messages handled through mailing houses. The company makes no purchases for resale.

“When brochures are finished, the company bills the candidate for the brochures separately from other consulting services, but does not usually specify on the invoice the exact printer’s charges nor does it routinely show the markup separately. There can be some variation in the actual markup percentage but this is not apparent from the invoice which the candidate receives.

“The great bulk of the company’s income is from charges for consulting and planning services. The true object of the contract is the performance of consultant services leading to the successful election of the candidate. The value of the simple artwork done by the in-house artist is minimal--perhaps \$100 per project, and an entire contract for campaign management can easily run \$30-50,000. Elaborate productions are handled by outside suppliers of art and mechanicals, and sales tax is charged by the suppliers.

“Other direct-mail-product-only accounts make up a smaller portion of this business. The company provides creative concept, copywriting, and graphic design with in-house staff. They then oversee and supervise print production and mailhouse services, and bill the client as described above. The company understands such ‘printed sales messages’ to be exempt from tax.

You note that the company “signs a contract indicating that the company is an agent in the purchase of brochures and other materials.” Apparently, the company wishes to avail itself of the procedure provided in Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers, at subdivision (a)(2)(A), to act as an agent for the client. To do so, the company must satisfy all the requirements in the subdivision whether or not the company is an advertising agency. The subdivision provides that:

“(I) the agency must clearly disclose to the supplier the name of the client for whom the agency is acting as agent,

“(II) the agency 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 any agency fee, must be the same as the amount paid to the supplier.”

The subdivision goes on to provide that the reimbursement for the property should be separately invoiced, or shown separately on an invoice, to the client.

Since you note that the company both marks up the cost of the brochures and does not separately invoice the reimbursement for purchasing the property, the company does not acquire the brochures as an agent on behalf of the candidate. Rather, the company makes a taxable retail sale of the brochures and artwork to the client.

Further, even were the company to purchase the printing of the brochures and other materials as an agent on behalf of the client, the company’s sales of artwork are subject to tax. You note that the value of the artwork is minimal, but you did not provide the basis for your conclusion as to that value. Your comment that the true object of the contract is the performance of consulting services suggests that you believe that the brochures or artwork are consumed by the company rather than sold. If so, we disagree. We do not believe that the company’s providing artwork or brochures is akin to an accounting firm or tax service furnishing forms or binders to its clients as an incident to the rendition of its services. Rather, the artwork or brochures are custom made properties and have value as items of tangible personal property. The retail sale of the tangible personal property is subject to sales tax. (Cf. Sales and Use Tax Reg. 1501, Service Enterprises Generally).

You note that the company understands that its sales of the brochures are exempt sales of printed sales messages. Enclosed is a copy of Sales and Use Tax Regulation 1541.5, Printed Sales

Messages. The term “printed sales message” is defined at subdivision (a)(1) and specifically excludes “campaign literature and other fund-raising materials.”

Where the company makes retail sales of brochures and artwork, the company should not pay sales tax reimbursement to its vendors for the paper, ink, and printing charges. Rather, the company should report and pay sales tax on its retail sales and issue resale certificates to its vendors where appropriate. Of course, if the company merely contracts to sell brochures to its client, and does not sell the artwork to its client prior to use, tax applies to the retail sale of the artwork to the company. The company may only purchase for resale that tangible personal property which is sold to the client before use or becomes an ingredient or component part of the tangible personal property sold to the client. This point is discussed at subdivision (d) of Regulation 1540.

If you have any further questions regarding this, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.