

Memorandum

515.0005.510

To : Mr. Glenn A. Bystrom
Deputy Director
Sales and Use Tax Department
MIC:43

Date: October 9, 1996

From : Gary J. Jugum
Assistant Chief Counsel

Subject: Database Transactions

You have asked us to clarify application of the sales tax to transactions involving transfers of database information.

The term "sale" means and includes "a transfer for 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." Rev. & Tax. Code § 6006(f), emphasis added.

Our historic analysis has distinguished not between tangible versus intangible but between sale versus service. Everybody agrees that if A commissions B to go out into the field and to gather data, and B turns over to A a report containing the information gathered, and A pays B for B's service of gathering the information and producing the report, then tax does not apply. This is a service transaction. This is a far cry from the situation under consideration, where A announces to the world that A has information for sale, and A has previously gathered the information, and A maintains the information in a computer database, and A then produces the report desired by B by a minimum number of strokes at the keyboard. The price charged by A to B does not cover the entire cost to A of creating the database, but is a charge designed to recover costs and generate profit through multiple sales of lists or reports drawn from the database.

The ordinary database situation fails the basic two-part test used in determining whether a transaction is a service transaction. First, A does not do field research, or even look up in a library of books the information that B wants. There is no real service done by A for B. A's minimal use of the keyboard is more in the nature of a manufacturing activity, performed by A for A's benefit in producing a product for sale. A database is "pre-researched," that is, the

“service” of locating information is done already, at the time the customer makes the request. Thus, the database is not compiled as a result of the request of the specific customer, but as a result of the business judgment of the vendor that there is a market for his product. Second, the transaction is not initiated by B, in the sense that B asks A to gather and compile the data. Rather, it is A who announces to the world as a vendor that a range of products is available for sale.

Thus, both parts of the two-part test are found “wanting” in the database case. These transactions should be taxed as sales transactions.

It has been our position that transfers of CD ROMs, diskettes and printed matter (whether printed by mass printing techniques, computer, word processor, or otherwise) containing information extracted from a previously existing database, are generally taxable, without regard to the fact that a particular listing of information from the database may have been prepared to the special order of the customer.

We have recognized two circumstances as research service cases. First, in cases where the information is of personal relevance to the inquiring party and not likely to be furnished in duplicate form to other persons, we have regarded the transaction as a research service and as nontaxable. Examples of the types of transactions treated as service transactions are as follows:

Individual Profiles. A charge for preparing an individual’s personality profile and forecast based on a person’s time, date and location of birth is not subject to tax. If individual profiles are prepared and furnished to the client and no two profiles are identical, the production of these individualized profiles is considered a service under Regulation 1501. If because a client had the same time, date and location as a previous client, the previous client’s profile was selected and furnished to the new client, the charge billed to the new client would be subject to sales tax. (5/12/93)

Custom Computerized Reports. A customized computer generated report prepared by matching raw scholarship data supplied by a client to scholarship information contained on a computer database to provide the clients with information concerning scholarships available to them, is a charge for research and the report is for nontaxable services. (8/20/93)

The line would be drawn, and tax would apply in the case, for example, where an individual asked for a copy of the front page of a particular newspaper, on the date of that person’s birth. The birth date would be personal, but the matter furnished would be likely to be furnished in duplicate form to other persons making similar inquiries.

Second, in some cases the inquiry is so specific and limited that the customer is not looking to acquire some duplicate part of taxpayer’s database (a sublisting of data from a broader listing of data) but is simply trying to obtain a status report with respect to the subject of interest.

The true object of the contract here is research, not the furnishing of an extracted portion (bulk data) of a file maintained by the taxpayer which would enable the customer to do his own research. "Looking it up" for the customer is research. Providing the reference work for the taxpayer to "look it up" himself is the sale of tangible personal property. In these cases, the information would likely be transferred in report form, for a fee based upon the cost to the taxpayer of making the specific inquiry. The shorthand test is--if the customer supplies the name, and the vendor provides information to the customer about the name, tax does not apply. If the customer identifies the category, and the vendor supplies the specific information (who or what is in the category), tax applies.

Thus, tax applies in all cases where there is a transfer of information drawn from a preexisting database, except as noted above. Tax applies whether the information transferred from the database is transferred in book, pamphlet or brochure form, or in CD Rom or diskette form, or as prepared by computer, word processor, or other method. Tax does not apply if the information is transferred electronically.

We have described application of the tax to database transactions by identifying nontaxable exceptions to the general rule. The rule of taxability may be stated from a positive point of view, although less easily. Tax applies if the information recorded onto a transfer medium from a previously compiled database will be or may be substantially incorporated into products which may be transferred to other persons. Under the test, as stated from this point of view, tax will always apply where the information transferred to the customer is transferred on CD ROM or in publications produced through mass printing techniques (printed matter). Tax will also apply where information is transferred on a custom-prepared diskette or in a custom-printed report, if the information transferred will be or may be substantially incorporated into reports furnished to other persons. Any listing of data by category specified by the customer should be regarded as information which may be substantially incorporated into reports which may be furnished to other persons.

GJJ:sr

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