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450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 324-2637
FAX: (916) 323-3387

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Executive Director

October 10, 1996

Ms. L--- T---
A--- M---
XXX --- Street
--- ---, California XXXXX

Re: Request for Opinion;
Web Site Design

Dear Ms. T---:

This is in response to your September 24, 1996 letter to Supervising Tax Counsel David Levine regarding the application of tax on your company's operations. Our understanding of the facts surrounding your present inquiry is based on your September 24 and September 13, 1996 letters to us.

Your September 13, 1996 letter states:

“In essence we are an online media provider with a focus on the Internet and electronic communication systems for all interactive media applications. We will consult, create, design, host, author, register, upgrade and maintain Web sites. Prior to the actual art creation, we need to plan with the client a flow chart which indicates how the site is to function (inter links)...”

Your September 24, 1996 letter adds:

“[T]he customer will be furnishing hardware and software to us for the design of an Internet web site. In the midst of the project we will have to use a third party to do some sophisticated modifications to the software, for the designs to be compatible. The unit will be returned to us for completion. Ultimately, the unit will be returned to the client to host on their own equipment or another ISP.”

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A sale generally includes any transfer of title or possession of tangible personal property or the fabricating of customer-furnished property for consideration. (Rev. & Tax. Code § 6006.)

You state that your customer will provide you with computer hardware and software that either you or a third party (on your behalf) will operate and modify in order to design a web site. We assume that the customer's computer hardware contains the software that your company will modify and that your company (or the third party working on your company's behalf) will not provide the customer with any copies of the modified software in tangible form (i.e., floppy disks, computer tapes, etc.) or any other tangible personal property such as a program documentation or manuals. We also understand that your company will return all materials provided by your customer back to that customer upon completion of your work.

Under these facts, we do not regard your company as making a taxable sale since your are neither providing any tangible personal property to your customer nor fabricating the property provided to your company from your customer. Instead, we regard your company as merely reprogramming or reconditioning the computer hardware provided to it by modifying the existing software in order to create a computer web site that is not transferred to your customer in tangible form.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Tax Counsel

WLA:rz

cc: --- --- District Administrator - (--)