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November 13, 1992

Mr. F--- J--- B---  
L--- S--- L--- S---  
P. O. Box XXXX  
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. B---:

This is in response to your letter dated September 24, 1992 in which you state:

“This fax concerns questions I have about how much sales tax to charge in my young but growing company. I currently do Court research type projects and on-site copy work for law firms, and also do some on-site copy projects for larger established companies as a sub-contractor. My question will focus on how much tax to charge the law firms.

“My job sites include Courts, State and Federal Agencies, opposing counsel’s offices, medical facilities, and so on. Some documents are subpoenaed, some are voluntary, some are even obtained through search warrants. The following approach to billing is fairly standard in this industry and will apply in my current thinking. When doing an on-site copy project, I would normally charge a machine transport and set-up fee, an hourly rate for time spent on the job, and usually 20 cents per copy. The invoice would read as follows:

Machine transport and set up fee	\$100.00
4 Hours at \$25.00	100.00
500 Copies at 20 cents	<u>100.00</u>
Sub Total	\$300.00”

Your first question is whether you must charge tax on any or all of the above charges.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. A "sale" includes any transfer of title or possession of tangible personal property for a consideration. Rev. & Tax. Code § 6006(a).

"Gross receipts" mean the total amount of the sale price of the retail sales of retailers, valued in money, without any deduction on account of the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses. Rev. & Tax. Code § 6012(a)(2). In addition, the total amount of the sales price includes any services that are a part of the sale. Rev. & Tax. Code § 6012(b)(1).

Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. Civ. Code § 1656.1. However, the retailer is responsible for payment of tax on all taxable retail sales regardless of whether the retailer collects sales tax reimbursement from the purchasers.

Your contracts to provide copies of documents for your clients are sales of tangible personal property since you are transferring tangible personal property (the copies) for a consideration. You must include in the measure of tax all of the charges for such copies, including transport and set-up fees, the fees charged at an hourly rate, and the per copy charge. Transportation or postal charges for transportation from the retailer's business directly to the purchaser, if separately stated, may under certain circumstances be excluded from the measure of tax, but we do not have sufficient information to determine if this exclusion applies. We are enclosing a copy of Regulation 1628 which explains when transportation charges are excludable.

You ask whether charges for work as a subcontractor for a large company in the same business is subject to tax. Only retail sales are taxable. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. Rev. & Tax. Code § 6007. If the large company intends to resell the copies you make to another purchaser, you may accept a resale certificate from this company. The resale certificate must be complete, issued timely, and taken in good faith. If you do not receive a timely, complete, and valid resale certificate for a particular sale, your sale to the company will be presumed taxable, and you will have the burden of establishing otherwise. Rev. & Tax. Code § 6091. We are enclosing for your information a copy of Regulation 1668 which discusses resales certificates, including the information that should be included in such certificates and when they must be received to be timely.

During our telephone conversation on November 3, 1992, you stated that attorneys have requested you to search court records to determine if suits have been filed by or against a particular person or entity and if so, to draft a summary of the issues in each suit. As I told you during our conversation, such transactions are deemed nontaxable service transactions even though tangible personal property (your summaries) is transferred to the client. In such transactions, the sales *to you* of the property that becomes a component part of the summaries, such as paper and ink, are taxable. However, if an attorney requests that you copy specific documents from a litigation file, the true object of the contract is the copies of the documents, and your charges for such copies, including set up fees and hourly fees, are taxable. Your charges are taxable even if the court clerk makes the copies.

You ask whether you may avoid paying tax on your purchases of supplies that you use in your business. Sales of property to a purchaser who uses the property as manufacturing aids are retail sales subject to tax. If, however, an item becomes a component part of tangible personal property which is resold and if the item continues to serve a beneficial purpose after it is incorporated into the property, the item may be purchased with a resale certificate. Enclosed is a copy of Regulation 1525 which explains these rules.

You may purchase paper, binder clips, toner, rubber bands, and staples with resale certificates if such items become incorporated into or sent with the copies of the documents whose sales are taxable. However, if you purchase such items for resale and then consume them yourself, e.g. you use the paper for writing letters to clients or you use the paper in a nontaxable service contract, you must pay use tax measured by the purchase price when you take the items out of inventory and consume them.

Items such as staplers, Bates stamps, and copy machines are manufacturing aids, and therefore sales of such items to you are taxable. You should not issue a resale certificate when purchasing them.

You ask whether you should charge sales tax for document numbering or Bates stamping. As noted before, all charges for services involved in the production or sale of tangible personal property are included in the measure of tax.

You ask whether you should charge sales tax if you client is the Attorney General's Office or other state agency. As I noted on the telephone, there is no exemption for sales to state agencies, including sales to the Board of Equalization. Sales to the United States government or to its agencies or instrumentalities, such as the United States Attorney's Office, are exempt from tax. Rev. & Tax. Code § 6381.

Finally, I am enclosing a copy of Regulation 1701 which explains the tax-paid purchases resold deduction. This deduction may be allowed if a retailer has paid sales tax reimbursement to his or her vendor on property which the retailer subsequently resells.

Mr. F--- J--- B---

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November 13, 1992  
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If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu  
Tax Counsel

EA:cl

Enclosures: Regulations 1525, 1628, 1668, and 1701