

**STATE BOARD OF EQUALIZATION**

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Executive Director

June 15, 1995

REDACTED TEXT

Dear REDACTED TEXT,

Your March 25, 1995 letter to Gerald Jung of the Board's Oakland District Office has been referred to the Legal Division for a response. You state:

"My new company, the REDACTED TEXT is an international 'matchmaking' service. We provide information on single Russian, Ukrainian and other Commonwealth of Independent state (CIS) women, who desire to immigrate to the USA and marry single American men also who wish to marry.

"The REDACTED TEXT does not charge our female clients in the CIS to sign up with our service. They complete an application and provide at least one photograph of themselves. When we receive their applications and photographs, we do the following ... before selling their information:

- We transfer (and often translate) their biographical information onto a standard resume form. We sell photocopies of this new resume form.
- We send their photograph to a lab where they make a negative (for \$2.50) and prints (\$0.25 each at quantity). We attach one of these new \$0.25 prints to the photocopy.
- We enter their Russian Cyrillic address into a computer along with the English equivalents. We print the two Addresses out for each woman on a single sheet which we then photocopy and sell."

You ask how tax applies on the various goods and services provided by your company in particular situations. For purposes of clarity, we have responded separately to each of the situations you present as set forth below.

"1. Single information sets which include one resume (with picture) and corresponding address. Our cost of materials to produce this is about

\$0.45 which includes the nonrecurring cost of \$0.12 for the negative and the recurring cost of the picture (\$0.25) and photocopies of the resume (\$0.04) and the address (\$0.04). If we were to assume a markup of 50% on cost of goods sold, the 'material' portion of this information would be about \$0.68. However, we charge \$12.50 to cover all of our costs which are primarily labor and significant overhead costs such as advertising and international phone and postage costs."

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) The term "sale" includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use or other consumption in California. (Rev. & Tax. Code § 6201, 6401.)

Persons engaged in the business of rendering services are consumers, not retailers, of the tangible personal property they transfer incidentally to the performance of the service. (Reg. 1501.) Tax applies to the sale of the property to those persons or to their use of that property. (*Id.*) The distinction between the sale of tangible personal property and the transfer of such property incidental to the providing of a service is set forth in Sales and Use Tax Regulation 1501:

"The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true object of the contract; that is, is the real object sought by the buyer the service per se or the property produced by the service "

We understand that your company provides resumes and photographs of women from the CIS to its male clients inside this state. Your company prepares these resumes and photographs from the information and pictures provided to it from the CIS women and incurs various costs in this process such as postage, long distance telephone charges, and copying fees. Your company then transfers these "single information sets" for a flat fee which covers your company's costs of producing the resume plus a mark-up.

Based on the foregoing, we regard your company as selling a nontaxable service if it is truly undertaking, through the exercise of skill, expertise and experience, to match eligible men with eligible women from the CIS who wish to marry and is not merely undertaking to sell copies of resumes and pictures to customers. That is, your company is selling a service where it provides its customers with input, advice or assistance in the selection of potential mates from the CIS as opposed to simply selling pictures and resumes of CIS women that are selected solely by customers after browsing through resume books. Thus, if the items provided to your company's customers are the result of significant matchmaking services, the transfer of resumes and pictures to these customers is incidental to the service of identifying potential matches and your company is regarded as the consumer of these materials. However, your company's operations constitute the selling of resumes and pictures when those items are not provided in connection with significant matchmaking services. If such is the case, tax applies to your company's entire gross receipts from the sale of such materials. That is, tax would apply to your company's entire charge of \$12.50 for a single information set sold to a client.

"2. Custom portfolio of 10 resumes without addresses: Our cost for these 10 resumes (\$0.40) with pictures (\$3.70), assembled in six plastic sheets (\$1.20) and an inexpensive folder (\$1.00) is about \$6.30. A 50% markup on this product would be about \$9.45. We sell this portfolio for \$25.00."

We assume that the custom portfolio essentially consists of multiple "single information sets" as described above. If so, tax applies to the custom portfolios as set forth in our response to question one above.

"3. Custom portfolio of 10 women with addresses: Our cost is as above plus 10 more photocopies (\$0.40) for addresses or about \$6.70. A 50% markup would bring its 'price' to about \$10.05. We sell this product for \$62.50."

Please see our response to questions one and two above.

"4. Our ultimate package is a 20 woman portfolio with addresses. The customer comes to our office where he selects 20 women from the 300 we have in our files. My Russian partner and myself help him by translating applications and letters and showing him additional pictures over a two hour period. We help our male client write his initial letter as well as forward all of his letters to Russia where they are remailed. Our cost of materials for this product is about double that above, or about \$14.00. Marked up, this 'material' should cost about \$22.00, but we charge \$125.00."

Please see our response to questions one and two above.

"5. Single address only: There are cases when we only sell an address, either to someone who has already bought a 'resume only' portfolio, or of a woman listed on our 900 phone service. In these cases, we sell an address for \$10.00, but the cost of materials is only \$0.04 for the photocopy."

In this situation, your company is selling a document containing information specifically requested by its client after its initial sale of a "resume only" portfolio or after a client's use of its 900 phone service. Under these facts, we regard the sale of a single address as the sale of tangible personal property subject to tax. (Rev. & Tax. Code § 6051.) As such, tax applies on the \$10.00 amount your company charges its customers in this situation. (Rev. & Tax. Code § 6012.)

"6. Consulting services where we advise our clients at the rate of \$25 per hour. Sometimes we will send photocopies (no resumes/addresses) of information applicable to the area being consulted."

We assume that the true object of this transaction is the consulting services (see Business Taxes Law Guide Annots. 295.0065 (6/30/62) and 515.1400 (4/15/68)) and not the transfer of photocopied information. We also assume that any photocopied information is transferred incidental to the providing of consulting services. If so, your company is the consumer of any tangible personal property (e.g.

paper, etc.) used in performing its consultation services and tax applies with respect to the sale of this property to it.

"7. Translation services where we translate male client's letters at \$25 per hour. We usually send a computer printout of the translation to our customers, but sometimes we simply translate the letter over the telephone."

We regard the translation of Russian to English as a non-taxable service. We also regard the providing of a computer print-out of a translated letter as incidental to the translation service itself. Tax does apply, however, on sales of additional copies of translated letters to your client. (Reg. 1502 (d) (5) (F) .)

"8. Travel planning. We are not travel agents, but we offer travel advice at \$25 per hour. We also direct our customers to Russian families who directly charge our customers \$20 to \$40 per day for room and board, and other services such as sightseeing, translating, driving, etc."

It is unclear from this question what, if any, tangible personal property is transferred by your company to its clients. Generally, however, we regard travel planning as a non-taxable service.

"9. Travel packages. We want to offer travel packages (e.g., \$2,500 for 10 days in St. Petersburg) where we buy our client's airline ticket and pay for this (sic) accommodations in Russia."

We do not regard the sale of airline tickets or hotel accommodations as the sale of tangible personal property. Thus, sales or use tax does not apply to your company's travel packages provided no other tangible personal property is provided to its clients as part of the sale of such packages.

"10. Russian supplies, such as Russian stamps which we sell for \$2.50 even though the stamps actually cost us only \$0.50 each plus the cost and trouble of acquiring them in Russia and having them shipped to the USA."

We regard the delivery of mail as a nontaxable service. As such, we regard postage stamps as a representation of the right to receive mail delivery and not as a sale of tangible personal property. This means that sales tax does not apply to your company's sale of Russian stamps used for the purposes of obtaining postal delivery. Tax does apply, however, where your company sells Russian stamps as collector's items and not for use for postal delivery. (Business Taxes Law Guide Annot. 168.0050 (3/10/52).)

"11. Computer discs with standard Russian phrases. These discs are used by male clients to insert some Russian Cyrillic phrases into their computer-generated letters. We might also expand this information to include some standard letters which our male clients could modify and use in their correspondence. These discs only cost us \$1.00 but we sell them for \$10.00."

The retail sale of computer disks to your clients inside this state constitutes a sale of tangible personal property subject to tax. (Rev. & Tax. Code § 6051.) Tax applies on all amounts received with the respect to such sales with no deduction for the cost of materials, service, or expense of your company passed on to your clients unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.) This means that tax applies on the \$10.00 amount your company charges for a computer disk containing standard Russian phrases. Your company may collect reimbursement from its client for the amount of this tax if the contract of sale so provides. (Civ. Code § 1656.1.)

"[12.] We plan on selling some items such as Russian travel video tapes, English/Russian dictionaries and Russian language audio tapes. [Are] ... these items ... subject to state taxes?"

Tax applies to your company's sales of these items as set forth in our response to question 11 above.

"[13.] We charge an additional \$5.00 for handling and mailing. Is this taxable?"

Tax does not apply to separately stated charges for transportation of property from the retailer's place of business or other point from which shipment is made directly to the purchaser. (Rev. & Tax. Code § 6012(c) (7); Reg. 1628.) "Handling" charges or charges for shipping in excess of the actual amount of postage placed on a package mailed to a customer constitute amounts received for the sale of tangible personal property and are includible in your company's taxable gross receipts. (Rev. & Tax. Code §§ 6051, 6012.)

The Board recently adopted an amendment to Sales and Use Tax Regulation 1628, a copy of which is enclosed. This amendment, which is pending final approval from the Office of Administrative Law, provides that if a separately stated charge is made for "shipping and handling," the portion of the charge which represents actual shipment may be excluded from the measure of tax whether or not the actual amount is affixed to, or noted on the package.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

Attachment – Amended Reg. 1628

cc: Alameda District Administrator - CH