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August 20, 1993

REDACTED TEXT

Re: [No Permit Number]
Scholarship Information Reports

Dear REDACTED TEXT:

I am responding to your letter to the Legal Division dated June 15, 1993. You ask for an opinion as to whether or not your company is required to obtain a seller's permit. Our REDACTED TEXT office suggested that you write.

You indicated that you purchased, on June 3, 1993, a home business selling non-Federal scholarship information from the REDACTED TEXT. You describe your operation as follows:

"My company, REDACTED TEXT, matches people interested in scholarship information with customized reports on scholarships available to them, based on their completed application forms and the database managed by REDACTED TEXT, affiliated with REDACTED TEXT, as follows:

"REDACTED TEXT pays sales tax on all marketing materials, application forms, and other collateral [sic] materials that it has printed at its own expense, to locate clients.

"REDACTED TEXT forwards completed applications to REDACTED TEXT for an agreed upon price.

" REDACTED TEXT returns customized reports for each client to REDACTED TEXT for the agreed upon price.

"REDACTED TEXT [presumably, REDACTED TEXT] delivers the customized reports to each client.

OPINION.

A. Taxation of Service Enterprises Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) "Tangible personal property" is

defined as "property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses." (§ 6016.)

Regulation 1501 explains the application of tax to service enterprises generally as follows:

"Persons engaged in the business of rendering service are consumer, not retailers of the tangible personal property which they use incidentally in rendering the service. Tax, accordingly, applies to the sales of the property to them...."

"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, if the real object sought by the buyer is the service per se or the property produced by the service. If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred...."

B. Tax Consequences to REDACTED TEXT

We have previously determined that where the taxpayer does customized research on a computer database for a particular client, from raw data originally supplied by that client, and sends the client a computerized report of the information located on the database, the charge for such research and report is for a nontaxable service. The true object of the contract is to obtain the information. The printout is merely the means of transmitting the product of the service and is only incidental to providing the service. The charges for such service are thus not subject to tax. (Annot. 515.0950; See, also, CLD 499. Sales and Use Tax Annotations are excerpts from previous Legal staff opinion letters and serve as a guide to staff positions.)

A seller's permit is required only if you intend to sell property "of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (§ 6014.) You indicate that your sole product is these customized scholarship reports, sales of which are not subject to tax. Therefore, you need not possess a seller's permit. If you do, however, sell non-customized reports, market surveys, etc., we consider such sales to be taxable since the primary object of the transaction is to obtain the tangible personal property - that is, the pre-printed report. (CLD 499.) You would then be required to obtain a seller's permit.

For your information, I have included a copy of Regulation 1501. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

515.0965

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August 20, 1993

JLW:es
REDACTED TEXT

Enclosure: Reg. 1501