REQUEST LETTER

04-005

LETTER FROM TAXPAYER SERVICES DIVISION

NAME
ADDRESS

Re: COMPANY VS COMPANY

Dear Madam,

We are responding to your fax requesting a determination of the taxability of the charge for designing a Power-Point presentation.

I consulted with a sales tax manager in the Auditing Division to prepare my response. Administrative rule R865-19S-111 deals with "graphic design services" while rule R865-19S-92 deals with "computer-generated output." I am including copies of these rules with this letter.

According to the Auditing Division, "graphic design services" are services to design a logo, trademark or similar design or graphic. It does not include the design of a PowerPoint or other presentation. A presentation, when prepared by computer, is "computer-generated output" instead of "graphic design services."

Per rule R865-19S-92, "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer. The rule also states: "The sale of computer-generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output."

The questions now is, what is the primary object of the sale PowerPoint presentation? Is it the services to design the presentation or is it the compact disk or electronic file that makes the presentation possible? Our opinion is that the primary object of the PowerPoint presentation is the compact disk or electronic file that makes the presentation possible. That makes the sale of the presentation taxable.

Sincerely,
Taxpayer Services Division

REPLY LETTER FROM TAXPAYER

NAME
ADDRESS

Re: Graphic Design Services

Dear Taxpayer Services,

After speaking with xxx in the Auditing Division, he has given me my different options at this point in time. In doing some additional research and interviewing the team manager, I have discovered the specific facts about the service we are providing and feel that this may actually be a non-taxable event.

Here is what I have discovered:

LARGE COMPANY puts on a large annual show called CONFERENCE NAME that consists of speakers with presentations covering several different topics. They hired us to work on the presentations used by the speakers.

The speaker (usually a LARGE COMPANY employee) puts together their presentation and sends it to our staff that we have located on site at LARGE COMPANY. The staff member takes this existing presentation that has been designed on a free downloadable presentation program and uses their expertise in making the presentation look more professional. This includes the addition of graphics and color schemes to match the look and feel of LARGE COMPANY. The presentation is then returned to the speaker for approval and use.

We believe that the fact that the speaker actually creates the presentation and we only edit it to be more professional would constitute an additional review of the situation by your agency. I apologize for not being clear on the facts initially. We are hired strictly for our design services and this is the essence of the transaction.

Based on the reading of all literature that has been forwarded to us, our position is that the graphic design services in this instance are the object of the transaction and therefore, this should be a non-taxable event. Please respond as soon as you can and feel free to contact me at PHONE if you have any questions. Please also fax your response to PHONE.

Sincerely,

NAME

RESPONSE LETTER

July 7, 2004

NAME
ADDRESS

RE: Private Letter Ruling Request – Taxation of Services Performed on a "Power-Point" Presentation

Dear NAME,

You recently contacted Taxpayer Services Division ("division") concerning the taxability of services your company provides relating to Power-Point presentations. Apparently, your initial description of the services led the division to believe that you sold your customer computer software consisting of a Power-Point presentation. Based on these facts, the division determined that the services were taxable because your customer's primary objective for the sale was to receive tangible personal property, i.e., the compact disk or electronic file containing canned computer software. Subsequently, you discovered that the transactions involved a different set of facts and asked the division to reconsider its decision based on these new facts. The division asked the Tax Commission to issue a ruling instead on the matter.

From information you provided in your letter and a recent telephone conversation, we understand the facts to be as follows. LARGE COMPANY holds a conference every year known as "CONFERENCE NAME," which consists of more than 100 presentations by LARGE COMPANY

employees who graphically illustrate their presentations using a Power-Point computer software program. In preparing their presentations, the LARGE COMPANY employees download a free Power-Point software program and prepare drafts of their presentations using this software. Then, the LARGE COMPANY employees email to your company the Power-Point files on which they have created their draft presentations. Your employees edit these files to ensure that all NAME presentations have the same color scheme (to ensure a consistent "LARGE COMPANY") and to make the presentations look more professional. Once your employee has performed these services, he or she either emails the revised Power-Point programs back to LARGE COMPANY or delivers them in a hard-disc copy.

At issue is whether LARGE COMPANY is purchasing taxable tangible personal property or nontaxable services from your company. Utah Admin. Rule R865-19S-92 ("Rule 92") provides that the sale of "canned computer software" is taxable because it is the sale of tangible personal property, while the sale of "custom computer software" is nontaxable because it is the sale of personal services not taxable under Utah law. Section D of Rule 92 further provides that charges for services to modify or adapt canned computer software to a purchaser's needs are not taxable if separately stated. Furthermore, Section E provides that the sale of computer generated output is subject to taxation if the object of the sale is the output and not the services rendered in producing the output.[1]

First, we do not believe LARGE COMPANY has purchased taxable canned computer software from your company. LARGE COMPANY possessed the Power-Point software and had prepared a draft presentation on it prior to delivering it to your company to edit and revise. Technically, once you perform your services and send LARGE COMPANY the revised Power-Point program, you have delivered tangible personal property (the computer software) to LARGE COMPANY, regardless of whether the delivery was by email or on disc. Nevertheless, while the Power-Point program may itself be considered canned computer software for purposes of sale, LARGE COMPANY did not receive the right to possess it through its transaction with you. Instead, by contracting your services to revise a program it already owned, the Commission believes that LARGE COMPANY primary objective for entering into its contract with you was not to purchase canned computer software or to receive a disc on which the revised program might be delivered, but to purchase your services to modify or adapt its computer software, which is nontaxable under Section D of Rule 92.

Nor does the Commission believe that LARGE COMPANY primary objective was to receive computer generated output from you. Although a Power-Point demonstration is usually prepared for visual presentation, the program can also be used to prepare printed copies of that presentation, which could be considered computer generated output. However, the LARGE COMPANY employees had already created their Power–Point presentations and had the ability to print computer generated output from these "draft" presentations prior to you performing the services at issue. After your employees perform their revisions, LARGE COMPANY has access to "new" computer generated output that is distinguishable from the old "draft" output which did not contain your editing and stylistic changes. We believe that has access to the same computer generated output that has been modified through your services. This is not "new" output. Accordingly, the Commission does not find that computer generated output was LARGE COMPANY primary objective, but that LARGE COMPANY primarily contracted to receive nontaxable services to edit and revise the programs from which the output could be generated. As a result, no sales tax is due on the transactions you have described. Of course, our determination is based on the facts as presented above. Should the facts be different, our response might change, also.

We note that should you "deliver" your services to LARGE COMPANY by giving it a hard copy

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1 Certain Streamline Sales Tax ("SST") provisions previously enacted by the Utah Legislature became effective on July 1, 2004. Although some terms, definitions, and specific sections of Rule 92 have been modified by these SST provisions and, as of July 1, 2004, will be found in statute instead of rule, any such changes would have no effect on our ruling in this matter.

disc with a revised presentation, you would be considered the consumer of the disc in providing your nontaxable services. Accordingly, you would need to pay sales tax when you purchase the disc or accrue use tax upon using it, if it were purchased tax-free.

Should you have any other questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/KC
04-005