

Revenue Ruling No. 02- 012

August 30, 2002

Sales and Use Tax

Sales and Use Tax Treatment of Audience Survey Information

The purpose of this Revenue Ruling is to discuss the applicability of the Louisiana sales and use tax to television and radio listener surveys that are supplied to customers in the form of tangible personal property.

Issue

Audience survey reports can be transmitted to customers electronically, in printed form, or by other means. Questions arise over whether the audience survey report delivered in a printed or electronic format represents the sale of tangible personal property or the providing of a service in which tangible personal property is used as a medium to transmit the results.

Description of Audience Survey License Agreements

Audience survey reports assist television and radio stations to determine audience interest in different television and radio broadcasts within their markets. The stations use the reports to solicit advertising sales for broadcasts. The broadcast stations request information on a particular demographic of viewers or listeners, such as information on patterns of viewers or listeners in a particular geographical region, in a particular age category, or within a certain time period.

In order to provide reports with the information that the stations have requested, the audience survey companies contact television viewers and radio listeners to learn about their viewing and listening preferences and patterns. The companies compile this research and prepare customized reports for their clients about the size of the target market and other demographic audience information. Due to the changing preferences and makeup of audiences, the useful life of surveys is estimated to be no more than 90 days.

The audience survey reports to television and radio stations are subject to restrictive licensing agreements under which the reports remain confidential and the property of the audience survey company. Stations and their employees are prohibited from disclosing the information in these reports to outside parties except for promotional purposes. Additionally, the stations must identify the audience survey company when distributing ratings information to prospective advertisers or in promotional literature.

Classification as a Service

When determining if transactions are subject to the sales and use tax, each transaction must be considered separately. In the situation of audience surveys supplied on tangible media, the overall analysis indicates that the true object in providing the reports is a service.

The factors considered in determining that the true object of this transaction is a service are that the value of the paper provided to the customer is negligible in comparison to the substantial services that were provided in preparation of the customized reports and that there is a distinction between the value of the intangible content of the report and the tangible medium on which it is transferred. In seeking the audience survey reports, the stations are not interested in the intrinsic value of the paper itself. If the paper were destroyed, the stations could request copies of the reports, likely at no additional charge to the station. Instead, the stations are interested in the data that the reports provide.

In this regard, the reports provided in tangible form are analogous to a will or contract provided by an attorney. The traditional treatment of that transaction is that the attorney is providing services that are eventually reflected in the paper documents. However, the true object is not the paper on which the will is typed. Rather, the true object is the skill and expertise of the attorney in crafting a

document that best serves the client's needs. In the same manner, the audience survey reports provided in tangible form reflect the skill and expertise of the audience survey companies and any tangible documents provided to the customer are insignificant to the services provided.

Similarly, the intangible content of the reports, although transmitted on a tangible medium, have a value separate and apart from the tangible media on which they are transmitted. The customer seeks the data, not the tangible personal property upon which the survey results are transferred. The tangible personal property is merely a delivery mechanism to send the findings to the stations.

Sales and Use Tax Consequences of being classified as a Service

The above analysis shows that the true object of these audience survey reports is the performance of a service for the benefit of customers. Only eight services are subject to Louisiana sales and use tax, as provided in La. R.S. 47:301(14). The service of measuring the preferences of viewer or listeners in a market and creating reports is not one of these enumerated services, thus these transactions are not subject to the sales and use tax imposed on services.

Comparison to the sale of generic marketing publications

In some cases, survey companies sell generic publications that are reproduced without modification. These transactions involve the sale of tangible personal property where the true intent of the buyers is to acquire the publications themselves and not the providing of a nontaxable service. Generic publications have an intrinsic value in and of themselves as with the purchase of a book. If a book is lost or destroyed, the purchaser would have to pay the full price of the book to replace it. Similarly, in the case of a generic publication, the purchaser would have to pay the full price of the publication to replace it. Conversely, in nontaxable services, the cost of replacing the tangible personal property would be negligible compared to the original cost of the service.

Conclusion

Louisiana Sales Tax law imposes tax on the sale, use, or rental of tangible personal property and certain enumerated services. Custom prepared audience surveys are not considered to be the sale of tangible personal property nor is the providing of audience survey information to radio and television stations one of the taxable services under La. R.S. 47:301(14). Therefore, audience surveys are not subject to Louisiana Sales and Use Tax even when transmitted in the form of tangible personal property. However, as the provider of a nontaxable service, the vendor is required to pay sales or use tax on the cost of any materials transmitted to the customer.

For more information regarding this topic, taxpayers should contact the Policy Services Division at 225.219.2780.

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