



STATE BOARD OF EQUALIZATION
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 445-3723

December 12, 1990

Mr. J--- V---, Esq.
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Attorneys at Law
Suite XXX, --- ---
XXXXX --- --- ---
---, CA XXXXX

Re: G--- P---
SN -- XX-XXXXXX

Dear Mr. V---:

This is in response to your letter of October 19, 1990, directed to our Culver City office. Your letter was referred to this office for reply. We apologize for the delay in our response.

You have requested our opinion, under Revenue and Taxation Code section 6596, which provides that a person may be relieved of taxes, interest, and penalties, if their failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Board.

We understand that your client, G--- P--- ("GP"), a sole proprietorship, sells artwork and/or negatives to G--- P--- M---, Inc. ("GPM"). GPM then leases the artwork and/or negatives to a third party.

It is your analysis that the sale from GP to GPM may be treated as a sale for resale. The lease from GPM to the third party would be subject to tax if GPM had not paid tax with respect to the acquisition of the artwork and/or negatives.

You are correct that GPM could pay tax on its acquisition and thus avoid tax on the lease transaction. The measure of tax with respect to the acquisition, however, would include all amounts required to be paid by GPM to GP, including the amount paid for any reproduction rights. It would appear that the artwork and/or negatives would be valueless to GPM unless GPM acquires reproduction rights. The Board has just adopted its Regulation 1543 concerning the publishing industry. In adopting the regulation, the Board rejected the contention of the industry that the amount paid for reproduction rights may be excluded from tax where there is a transfer of all right, title and interest, including the right to reproduce with respect to artwork or negatives, or where there is a leasing of such artwork and/or negatives with a limited right to reproduction.

It would appear that while the sale price from GP to GPM would be less than the aggregate rental receipts to be derived by GPM from their parties, the differential would not be substantial. If GPM were to pay GP only a nominal amount and not an amount reflective of the reproduction value of the artwork or negatives, then the Board would conclude that tax had not been paid with respect to the acquisition of the property and tax would apply to rental receipts.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

cc: Mr. H. Murray
Supervising Tax Auditor
Culver City District