STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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October 14, 1993

Mr. --- ---
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Dear Mr. ---:

This is in reply to your August 26, 1993 letter you sent by fax wherein you asked questions for clarification of recently published Business Taxes Law Guide annotations 100.0310 and 100.0320 which respectively state:

> "100.0310 **Copy Writing Solely for Media Advertising**. Charges for copy written solely for media (television, radio, newspaper, etc.) advertising messages or for more than one purpose, one of which is for media advertising messages, are not taxable. Such charges must be separately stated from taxable charges. Therefore, if the agency contracts to furnish the client with both the mechanical and the placement of the advertising, the agency's separately sated charge for writing the copy is excludable from the gross receipts of the sale of the mechanical. 3/27/87.
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> "100.0320 **Copy Writing Used in Media Advertising**. If an agency only sells a mechanical to a client and does not contract to furnish the media advertising, the taxable gross receipts of the sale of the mechanical include the charge for the copy writing. In such cases, the agency's charge is for "copy written solely for use as a part of tangible personal property as to which the agency is acting as a seller." (Regulation 1540(b)(4)(E).) The client's furnishing the mechanical to the media does not make the charge for the copy nontaxable. 3/27/87."

The annotations are based upon Sales and Use Tax Regulation 1540, subdivision (b)(4)(E) which provides:

"Copy writing. Effective January 1, 1975, tax applies to charges for writing copy written solely for use as a part of tangible personal property as to which the agency is acting as a seller. Tax does not apply to such charges in other circumstances or when the agency is acting as agent. Tax does not apply where copy is furnished to media in manuscript form."

Our response follows each of your questions.

"1. Since media placement is a tax exempt service whether or not an agency acts as an agent, I do not understand the relevance to the taxability of copy writing charges as stated in annotation 100.0310. Is it possible that the principle of "true object of the contract" as stated in Regulation 1501 is the principle that makes the copy writing tax exempt when the true object of the copy writing is media placement? If that is true, then is copy that will be used to produce a printed sales message (Regulation 1541.5) also exempt?"

We do not have sufficient background information to provide you with the specific reason the Board adopted the position stated in Regulation 1540. It does appear that the Board recognized the service aspect of media placement in making its decision. The annotation and the regulation provision are not applicable to situations where the agency contracts to sell tangible personal property such as printed sales messages.

If an agency contracts with a client only to sell printed sales messages and the sale is exempt under Regulation 1541.5, Printed Sales Messages, tax does not apply to any of the charge. That is, the charge for writing copy would be includible in the exempt measure of tax. If the agency contracts to sell the camera-ready art as well as the printed sales messages, tax applies to the total gross receipts of the sale of the camera-ready art with no deduction for the cost of the copy writing. The copy is written "solely for use as a part of tangible personal property as to which the agency is acting as a seller." (Sales and Use Tax Reg. 1540, subd. (b)(4)(E).)

"2. Regulation 1540 (b)(4)(C) 'Consultation and Research' and 1540 (b)(4)(D) 'Supervision' contains language that is similar to 1540 (b)(4)(E) in that they all state that these charges are taxable if they 'relate **solely** to tangible personal property as to which the agency is acting as a seller'. Does this mean that similarly to copy writing charges, they are also tax exempt if the true object of the print production job is media placement (or perhaps any other tax exempt printing)?"

Charges for "Consultation and Research" and "Supervision" are nontaxable if those services do not relate solely to tangible personal property which the agency sells to the client.

However, similar to our answer to Question 1, if the agency contracts to make a taxable sale of camera-ready art and an exempt sale of printed sales messages, tax applies to the total gross receipts of the sale of the camera-ready art including charges for consultation and research and charges for supervision.

> "3. Is it possible that the ramifications of annotation 100.0310 are to exempt from tax all agency service charges for producing a mechanical that has media placement or other tax exempt printing as its true object?"

No. Except as expressly provided by the regulation, when the agency sells tangible personal property, the taxable gross receipts are the total sale price without any deduction for labor or service cost or any other expense.

> "4. If copy writing charges are the only charges that will be tax exempt according to annotation 100.0310, are the copy writing costs also excluded from the measure of fair retail selling price?"

As noted above, the rule expressed in annotation 100.0310 applies also to charges for consultation and research and charges for supervision. We assume that your reference to "fair retail selling price" is to a situation where an agency supplies camera-ready art to a client and includes the charge in a fee or commission as noted in the third paragraph of subdivision (b)(1) of Regulation 1540. Tax applies to the "fair retail selling price" of the camera-ready art including the charge for copy written solely for use as part of that camera-ready art. See the second paragraph of subdivision (b)(1).

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

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