

**STATE BOARD OF EQUALIZATION**

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March 15, 1991

Ms. K--- C. F---
P. O. Box XXX
---, California XXXXX

Re: SR -- XX-XXXXXX
Sale of Caricatures

Dear Ms. F---:

By letter dated January 22, 1991, you inquired about the application of sales tax to the caricatures you draw at events such as grand openings and office parties. According to your letter, the facts and your contentions are as follows:

“I am hired by agencies for their clients, or by individual companies one on one to ‘entertain’ their guests or customers by drawing CARICATURES of them at events like Grand Openings, office parties, etc. Musicians, and other entertainers hired in the same capacity do not pay sales tax on their income because their talent doesn’t produce a ‘tangible product’ like mine does.

“The Agencies say I’m hired by the hour to entertain and am under contract for a certain number of hours, whether or not I draw a single Caricature. The number of Caricatures I draw could be one or a hundred, so sales tax is inapplicable.”

Revenue and Taxation Code section 6051 imposes a sales tax upon retailers measured by their gross receipts from retail sales made in this state of tangible personal property. The tax applies to the entire amount charged by commercial artists for items of tangible personal property such as drawings, paintings, designs, or sketches. (Sales and Use Tax Reg. 1540 (c), Advertising Agencies, Commercial Artists and Designers.) The important issues in your case are whether you are selling tangible personal property and, if so, whether the charges representing the services that are provided by you with the sales should be included in gross receipts.

Tangible personal property means “personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.” (Rev. & Tax. Code § 6016.) Caricature drawings can be seen, weighed, measured, felt, and touched and therefore are tangible personal property.

A sale includes “any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.” (Rev. & Tax. Code § 6006(a).) In your situation, you transfer title and possession of the caricatures (which are tangible personal property) by giving them to the individuals at the events you attend. You receive a consideration in the form of money from the agency or firm which contracts with you to draw the caricatures. It is immaterial that the total consideration paid for each caricature varies, depending upon how many requests to draw you receive during an event. Thus, since you transfer possession and title of caricatures and receive a consideration, you are selling caricatures at the events you attend.

Sales tax is measured as a percentage of gross receipts. Gross receipts mean “the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise.” (Rev. & Tax. Code § 6012(a).) The total amount of the sale price includes any services that are a part of the sale. (Rev. & Tax. Code § 6012(b)(1).) Although part of the payment you receive for selling caricatures may represent payment for your services in attending the event and for drawing the caricatures, the sale price includes the full payment you receive, not just the value of the ink, paper, and drawing which you sell.

You state that you are hired by the hour, whether or not you draw a single caricature. We assume that at every event which you have attended you have drawn at least one caricature. But if you should attend an event at which you do not draw any caricatures, the payment you receive is nontaxable.

In conclusion, it is our opinion that you are selling tangible personal property when you are paid to draw caricatures at an event, that the entire amount you are paid is includable in gross receipts, and that you must pay sales tax measured by the full amount you are paid. Note, however, that although the sales tax is imposed upon you, you may collect sales tax reimbursement (usually itemized on an invoice as “sales tax”) from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.)

If you have not been reporting and paying sales tax on your taxable sales, you should do so immediately. If you need assistance in preparing and filing your returns, you may contact you local board office which is located at 922 G Street, P.O. Box 790, Marysville, California, 95901-0790. Its telephone number is (916) 741-4301.

Finally, if you would send us the names and addresses of the agencies which have been giving you the erroneous advice, we would be glad to write to them and present our views on this matter.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cl

bcc: --- District Office:

It appears from the central file that Ms. F--- has not filed returns for 1988, 1989 and 1990. You may wish to investigate further to determine if she owes sales tax for those years.