

**STATE BOARD OF EQUALIZATION**

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October 23, 1991

Ms. A. S--- A---  
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XXXX --- ---  
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Dear Ms. A---:

This is reply to your September 9 and October 9, 1991 letters regarding the application of sales tax to charges by one of your clients. You explained:

“The company is a design, communications, and production firm. Primarily, they are responsible for the concept design and follow through to the finished product of stage presentations. This includes the scenery, stage rigging, equipment rental, labor, site surveying, talent, music, etc.”

Given this information, you asked the following specific questions:

“1.) If the company is designing for a client only, is this taxable? The services included would be conceptual design, drafting, floor plans, lighting design and blueprinting.”

The charge for such design is subject to sales tax. Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers, provides at subdivision (c):

“The tax applies to the entire amount charged by commercial artists or designers for items of tangible personal property such as drawings, paintings, designs or sketches transferred to the client, whether or not the property is suitable for display or is useful for actual reproduction by photo-mechanical or other processes.

“Tax does not apply to separate charges for preliminary art as defined in (b)(4)(a).”

“2.) If the company is designing and producing as well, is the design service then taxable?”

We assume that by “producing” you are referring to the company’s production of tangible personal property which it sells to its client. The charge for designing the tangible personal property is includable in the gross receipts of the retail sale of the property.

In such case, where the company prepares the designs for its own use in producing the property, there is no basis for excluding charges for preliminary art from the taxable measure. Preliminary art is defined at subdivision (b)(4)(A) of Regulation 1540 and is limited to situations where the designer contracts to furnish finished art to the client.

“3.) If the company provides only a model for the client, is it taxable? If the company provides the model along with designing the production, is it taxable?”

The charge for a model is taxable whether the company designs the production or not.

“4.) If the company is producing the show out of state, then there should be no tax charged?”

Sales tax does not apply to sales of tangible personal property outside California. Sales tax does not apply when the company is required pursuant to the contract of sale to ship the property to a point outside this state and so ships the property by means of its own facilities or by delivering the property to a carrier, customer broker or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point. (Sales and Use Tax Reg. 1620, subd. (a)(3)(A).) Assuming that the tangible personal property the company sells or ships outside this state is not brought back into California by the purchaser for use in this state, neither sales tax nor use tax applies to the company’s sale of the property.

“5.) When is the income reported on sales tax return? The company may receive a retainer and work on a project for several months before final completion. Should the expenses incurred during each month of the project be considered earned income, or be recorded when the project is completed and paid for?”

The company must report sales tax for the reporting period in which the sale is made, which may or may not be the same period in which the company receives payment. For example, if the company receives a retainer in one reporting period and transfers title or possession of the tangible personal property in the following reporting period, the tax should be reported in the latter reporting period.

You listed a number of items and asked for the application of tax to the company's charge for the items.

When the company makes a retail sale of designs or scenery, tax applies to the entire gross receipts of the sale with no deduction for charges for the various items you listed in your letter (e.g., miscellaneous services, production management, site labor, and site survey). The charge for labor to install the property sold is excluded from the gross receipts of the sale. (Rev. & Tax. Code § 6012, subd. (c) (3); Sales and Use Tax Reg. 1546, Installing, Repairing, Reconditioning in General.)

We understand from your letter that the company will provide a "tech platform" to the client and remove the platform after production. From your description of the platform, we understand that the company would construct a platform for the client to use. Tax applies to the company's charge for the platform.

You also noted that the company will rent equipment (e.g., lighting, generators, special effects, rigging, etc.). You asked that we confirm your understanding that, if the company pays tax when they rent the equipment, then they do not charge the client tax, but if the company does not pay tax when they rent the equipment, then they charge the client tax.

We assume that the company does not actually sublease the equipment to the client rather than merely incorporate the charge for the equipment into the charge for the platform. In such case, if the company pays tax on rental receipts on the prime lease from a lessor, tax does not apply to the company's sublease of the equipment to the client. (Sales and Use Tax Reg. 1660, subd. (c)(5).)

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel

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