



STATE BOARD OF EQUALIZATION

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May 12, 1995

Ms. T--- P---
F--- C--- R---
XXX --- ---
---, CA XXXXX

Re: F--- C--- R---
SR --- XX-XXXXXX

Dear Ms. P---:

This is in reply to your March 15, 1995 letter regarding the application of sales tax to charges by your graphic design and advertising company. You noted the two following situations:

“1) Our client sells a software product at retail. We have been asked by them to design an opening screen for the software because they want it to be ‘designed’ and to look nice. We will give them the file electronically and they will program it to be interactive. It is part of the software product that is sold at retail. Is this then ‘for resale’?”

“2) Our client is an Internet service provider. Places on the Internet are defined by what are called ‘Home Pages’. A Home Page is the first thing you see when you go to a new site on the Internet. Our client has asked us to design their Home Page because they want to stand out and to look good. We will provide their programmer with an electronic file for them to manipulate and make interactive. Subscribers to our client’s Internet service pay a monthly fee. Is our work taxable?”

The California sales tax is imposed on retailers at the applicable rate of the gross receipts from the retail sale of tangible personal property in this state. As you know, when designers transfer designs embodied on tangible personal property, the charge is subject to sales tax.

When you sell a design to a client who will use the image as an opening screen for software it sells ("software retailer," herein) as you described in the first situation, your sale is not a sale for resale. A sale for resale occurs when a person sells tangible personal property to another person who sells that tangible personal property without any intervening use. When you sell a design to the software retailer, the software retailer does not sell that tangible personal property to another person; rather, the retailer uses the design by recreating the image on its software. Your sale of the design to the software retailer for that purpose is a taxable retail sale. Similarly, your sale of a design to the Internet service provider to use as a home page is a retail sale subject to sales tax.

You note you transfer the file "electronically." If that means you transfer the file to the client on a disk or any other tangible personal property, your transfer is a sale subject to sales tax. If you mean you transfer the file by fax or modem, and you do not transfer any tangible personal property such as storage media to the client, we consider such a transfer to be an electronic transfer of information and not a sale of tangible personal property. Sales tax would not apply to the charge in that case. (Cf. Sales and Use Tax Reg. 1502, subd. (f)(1)(D).)

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

RLD:sr

cc: --- --- District Administrator - --