



STATE BOARD OF EQUALIZATION

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March 4, 1993

Ms. A--- W---
Bookkeeper
P--- G---
XXXX --- ---, Studio XXX
---, CA XXXXX

Dear Ms. W---:

This is in reply to your September 28, 1992 letter regarding the application of sales tax to your charges to P--- for advertisements under the following facts you provided:

“When asked to create an ad for P---, our graphic artists use computers and their talent to create the ad. It is printed at our establishment and sent to P---, and of course we charge them a fee. This advertisement is called a ‘Spec Ad’ and is produced prior to the sale of advertising space to the customer.

“The P--- sales people then use our ad in presentation to the customer; on approval from their customer P---’s internal graphics department then recreates the ad for the yellow pages, using the guidelines from our ad.

“Camera ready art is produced by P--- and placed in the yellow page directory . . .”

Given this information, you asked the following specific questions:

“Since our ad is only a guideline, should we charge sales tax based on the fact that the ad itself is not used, and sometimes not even our layout is used for the final version of the directory?”

We first note that the sales tax is imposed on retailers at the applicable rate of the gross receipts of the sale of all tangible personal property sold at retail in this state. (Rev. & Tax. Code § 6051.) Whether or not you collect reimbursement for the tax from your customer is a matter of contract between you and the customer. (Civ. Code § 1656.1.) Sales tax applies to your retail sale of advertisements to Pacific Bell even though the advertisements may be only in the form of sketches. 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).”

Enclosed is a copy of this Board’s Pamphlet 38, Tax Tips for Advertising Agencies, for your further information.

“If so, are we then allowed credit for the materials used to produce the ad such as paper, printer supplies, etc.?”

Tax applies to the sale to you of tangible personal property which you use in creating the advertisement you sell. We are enclosing a copy of Sales and Use Tax Regulation 1525, Property Used in Manufacturing. As noted in subdivision (a), tax applies to the sale to you of tangible personal property you use in producing the product you sell. As noted in subdivision (b), you may purchase for resale or take a tax-paid purchase resold deduction only for the sale to you of tangible personal property you purchase for the purpose of incorporating into the advertisement.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Encs.