

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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January 10, 1985

Mr. M--- J. K---
Public Relations and Fundraising Consultant
XX --- Lane
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. K---:

This is in reply to your November 12, 1984 letter regarding the application of sales tax to charges for creating printed materials.

You explained that you create printed materials for use by non-profit organizations in their fund-raising operations. You do the consulting, research, copywriting, and project coordination. You subcontract to graphic designers, printers, photographers and others. You noted that you bill your clients for all of the services listed. We assume that you purchase the art work, photography, and printing in your own behalf and sell the printed materials to your clients. Given this information, you asked the following questions:

"1) Conceptual phase : consulting and research.

I meet with the client to plan evaluate (sic) client's needs and plan a program to meet these needs. The result of this consulting or planning phase defines lays (sic) the foundation for copywriting, design, etc. During this conceptual phase, I make recommendations in general terms, for example, on what the content of the brochure should be, whether photographs are appropriate for the project, how the brochure might be distributed."

QUESTION #1: Do I charge sales tax on my professional fee for this conceptual/consulting phase?"

We first note that, when you make a sale that is subject to sales tax, the tax is imposed upon you as the retailer. Whether or not you collect reimbursement for the tax from your client is a matter of contract between you and your client.

When sales tax applies to a sale, the tax applies to the cost of any services that are a part of the sale. (Section 6012), Revenue and Taxation Code.) The Board's legal staff has taken the position that:

“Services that are a part of the sale” include any the seller must perform in order to produce and sell the property, or for which the purchaser must pay as a condition of the purchase and/or functional use of the property, even where such services might not appear to directly relate to production or sale costs. Thus, charges described by a seller of catalogs as for preproduction research and consultation services and for postproduction merchandising consultation services are part of the taxable sales price of the catalogs, whether separately stated or not. The first “service” is a necessary prelude to catalog production; and the second is furnished only to catalog purchasers who are required to pay for the service when they purchase the catalogs, whether or not it is desired or used. (Sales and Use Tax Annotation 295.1690.)

When you do consultation and planning for a client as a service that is part of your sale of brochures, tax applies to your charge for the consultation and planning.

“2) Copywriting.

My copywriting results in a word-processed manuscript. The manuscript contains the words which will be printed in the brochure. (Page 7 of pamphlet 37 suggests this is not taxable while page 22 suggests that it is taxable.)

QUESTION #2: Do I charge sales tax on my professional fee for brochure copywriting?”

Page 7 of pamphlet No. 37 explains that tax does not apply to an a author’s charge for preparing manuscript copy. In such case, the author renders a service rather than makes a sale of tangible personal property. The author is the consumer of the paper used in preparing the manuscript, and tax applies to the sale of the paper to the author. Tax does not apply to the author’s incidental transfer of the paper to the person for whom the author prepares the manuscript. Page 22 of your pamphlet No. 37 refers to Regulation 1540(b)(4)(E) which provides that tax applies to charges for writing copy that is written solely for use as a part of tangible personal property as to which an agency is acting as a seller. In such case, the charge for writing copy is a service that is a part of a sale of tangible personal property. Tax applies to your charge for writing the copy of brochures that you will sell.

“3) Graphic design: preliminary art.

The graphic designer to whom I subcontract does certain preliminary work solely for the purpose of demonstrating an idea for acceptance by my client before proceeding to finished art. This includes layouts and comprehensive drawings.

QUESTION #3: Do I charge sales tax to my client for the graphic designer’s professional fee for preliminary art?

Regulation 1540Ob)(4)(A) provides the application of tax to charges for preliminary art:

“‘Preliminary art’ means roughs, visualizations, layouts and comprehensives, title to which does not pass to the client, but which are prepared by an advertising agency, commercial artist or designer solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into or before approval is given for preparation of finished art to be furnished by the agency, commercial artist or designer to its client. Tax does not apply to separate charges for preliminary art except where the preliminary art becomes physically incorporated into the finished art, as, for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction. The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as preliminary art. Proof of ordering or producing the preliminary art, prior to the date of the contract or approval for finished art, shall be evidence by purchase orders of the buyer, or by work orders or other records of the agency, commercial artist or designer. No other proof shall be required.”

Tax does not apply to your separately stated charges to your client for preliminary art which is clearly identified on your billing as preliminary when all of the following criteria are applicable to your charge. You may not pass title to the preliminary art to your client. The preliminary art must be prepared before you enter into a contract with your client for the preparation of the finished art or before your client gives approval for the finished art. The designer who prepared the preliminary art must furnish the finished art. The preliminary art must not be physically incorporated into the finished art or used as camera copy for reproduction.

“4) Writing the cover letter. This is a part of the job totally separate from the brochure. Sometimes my client will hire me to write a cover letter for his or her use which will accompany the brochure when mailed by the client.

QUESTION #4: Do I charge sales tax on my professional fee for writing the cover letter?”

When you sell brochures to a client and your contract requires you to compose a cover letter for the client to send with the brochures, tax applies to your charge for writing the letter as a service that is part of the sale of the brochures. Such is the case whether or not you separately state your charge for writing the cover letter.

“5) Word-processing cover letters.

Again, this is separate from the job of creating the brochure. Sometimes a client will hire me to subcontract the job of word-processing personalized computer-printed letters and envelopes. The letterhead and envelopes are supplied by the

client. The mailing list, maintained on disk for word-processing, is supplied by the client.

QUESTION 5: Do I charge sales tax on the professional fee for printing the cover letter?"

Sales and Use Tax Regulation 1526 provides that tax applies to charges for fabricating, processing, printing, or imprinting tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the fabricating, processing, printing or imprinting. Accordingly, tax applies to your charge for printing letters for your clients whether or not your client supplies the paper. You should issue a resale certificate to the printer from whom you purchase the printing.

For information as to the application of tax to your various charges for word processing, we are sending a copy of the mailing that this Board sent to persons engaged in the business of word processing. Paragraph No. 1 of the mailing deals with the situation you mentioned above. Although the mailing refers to some word processing activities as being generally nontaxable services, such services become taxable when they are services that are a part of a taxable sale.

"6) Do I apply sales tax on the professional fee for addressing the envelopes via word-processing as described above?"

Tax does not apply to your charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, and closing, sealing, preparing for mailing or mailing letters or other printed matter provided you separately state such charges on your invoices and your accounting records. (Sales and Use Tax Regulation 1541.)

We are sending the latest edition of Tax Tips for the Graphic Arts Industry (Pamphlet No. 37) and Tax Tips for Advertising Agencies (Pamphlet No. 38) for your further information. We hope this information answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

R. L. Dick
Staff Counsel

RLD:ct
Enclosures (3)