



STATE BOARD OF EQUALIZATION

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June 30, 1992

Mr. D--- F. R---, C.P.A.
--- and --- Services
XXX --- ---, Suite XXX
--- ---, CA XXXXX

Dear Mr. R---:

This is in reply to your May 14, 1992 letter regarding the application of sales tax to charges by your client (the Designer) under the following facts you provided:

“She is hired by corporations/businesses as an independent contractor to design and produce mechanical artwork for a variety of printed materials. The company assigns her a project - such as a brochure, package, data sheet, flyer, letterhead, etc. - and the first thing she submits to him is an Estimate Agreement, (Exhibit A) which outlines the project, gives an estimate of her time, and an estimate of the reimbursable expenses she feels will be necessary to complete the project. It also outlines the payment schedule she expects, has an ownership clause, and some minor legal stipulations that are customary to her profession. Once the client reads and signs the Estimate Agreement, she begins the job. It is from this point that the client is financially responsible for her time and all expenditures made on his behalf.

“The design process begins with her working up two or three preliminary designs (preliminary art) to present the client for consideration. Once a design is chosen, the client owns that design and she begins to assemble the pieces necessary to complete a final piece of artwork for the printer. If a design is not chosen, she is either asked to work up more designs, or to resign from the assignment. As a kind of “project manager,” she researchs and purchases all photography and illustration that are not provided by the client, and other supplies (type, art supplies, etc) necessary for her to complete the mechanical artwork. It is understood that anything she purchases to complete the mechanical artwork (photographs, illustrations, etc.) is to be returned to the client with the artwork,

and that at no time does she hold title or ownership of these items. Occasionally, she will purchase the printing of the piece as well, but for the most part, gives the artwork to the client, and he contracts a printing firm directly.

“The mechanical artwork is a black and white paste-up of the brochure\package\data sheet\flyer\letterhead layout. The shape of the item is drawn on a piece of white art board, then type galleys of the body copy and headlines are pasted into position on the art board, the logo stats are pasted into position on the art board, and she sizes the photographs\illustrations to fit in a designated area on the artwork. The piece of artwork is marked clearly on a tissue overlay for the printer to understand what colors the item is to be printed, where the photographs\illustrations are to be placed, what kind of paper the item is to be printed on and how many copies of the item are to be printed. He then photographs my mechanical artwork and compiles film negatives of the different colors which he uses to make the plates for the printing press.”

You noted that the Designer purchases the following items you referred to as “expenses” under a resale certificate and does not pay sales tax reimbursement on the purchase: photography, illustration, type-lino output, photostats\film processing services, art supplies, color separations, printing, copyrighting. The Designer indicates the charge as a line item on the invoice and charges the client sales tax reimbursement. You noted that the Designer does pay sales tax reimbursement on the purchase of such items when she purchases them for her own use.

The estimate agreement you sent (your Exhibit A) provides under “Ownership”:

“Title of all items purchased by _____ on behalf of the client is transferred to the client at the time of purchase and prior to usage by _____ Design. In addition, all items purchased are deemed to be resold at the same time.”

The Invoice you sent (your Exhibit B) shows that the Designer charges tax reimbursement on the total selling price of the taxable retail sale. Given this information, you asked for our opinion that the Designer is correct in considering that the following charges are not taxable:

“1. PRELIMINARY ART

When a design is not chosen to be completed to mechanical form.”

We are assuming that you are referring only to the situation where the Designer resigns from an assignment and retains title to and possession of designs and provides no tangible personal property to the client. In such case, we agree that tax does not apply to her charge to the client for her time spent.

“2. AGENCY\DESIGN FIRM

If she is doing a project for an advertising agency or another design firm where she has no direct contact with the client, and the agency or design firm has provided her with a completed resale tax card, she does not charge tax to the agency or design firm assuming the agency or design firm will charge tax on the final invoice to the client.”

The Designer may accept a resale certificate from an advertising agency or another design firm for the sale of the final product which will be sold by the ad agency or other design firm. On the other hand, the Designer's sale of special printing aids such as photography, illustrations, and the other items you listed as “expenses” generally would be a retail sale subject to sales tax regardless that the sale of the final product is a nontaxable sale or resale. The Designer may accept a resale certificate for the sale of those items only if the advertising agency or other design firm insists that it is purchasing the property for resale. In such case, the designer should require the purchaser to provide a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business. See Sales and Use Tax Regulation 1668, Resale Certificates, subdivision (d).

You asked that we provide you with a “formal ruling.” The Board's legal staff's opinions are not rulings. In fact, since you did not identify the Designer, the Designer may not rely upon this opinion for purposes of Revenue and Taxation Code section 6596 which provides the conditions under which a person may rely on written advice from the State Board of Equalization.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.