

**M e m o r a n d u m****100.0180**

To: San Francisco – Aud. (LC:REP)

December 20, 1965

From: Tax Counsel (WEB)

This is in reply to your memo of December 10, which inquires if there should be any change in the application of the tax to the above-named taxpayer's charges for art work in view of recent opinions that architectural delineations are taxable.

The test prescribed by current sales and use tax Ruling 2 was used to determine the application of tax to this taxpayer's preliminary art in the prior audit for all periods after September 13, 1961. It should be followed in classifying petitioner's art work for the current period. The fact that taxpayer's end product is an architectural delineation provides no basis for distinction.

It appears that your inquiry may be directed to that portion of paragraph (D) of Ruling 2 which provides in part as follows:

“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....”

In reading the preliminary hearing report for the prior deficiency determination, I note that he actually used the rough sketch to trace the outline of the art work to a separate water color board which became the finished art (see page 2 of preliminary hearing report attached). In interpreting this quoted portion of the ruling, we have previously ruled that the preliminary art work does not become “physically incorporated” unless it is actually touched up or finished and physically delivered to the customer as the finished art.

WEB:em [1b]