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June 30, 1992

Ms. E--- S---
P. O. Box XXXX
---, CA XXXXX

SR -- XX-XXXXXX

Dear Ms. S---:

This is in reply to your May 19, 1992 letter regarding the application of sales tax to your charges for illustrations.

You asked whether you need to charge tax on preliminary art (sketches) that is approved by a client as is, and over which, on a separate piece of paper, you trace the final drawing in ink. You note that you are not inking directly on top of the pencil sketch on the same piece of paper; that is, you distinguish such tracing from the situation presented in subdivision (b)(5) of Sales and Use Tax Regulation 1543 which provides:

“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 roughs, visualizations, layouts, comprehensives, or other preliminary art. Proof of ordering or producing the preliminary art, prior to the date of the contract or approval for finished art, shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller. No other proof shall be required. Tax applies to the total charges made for finished art.”

The term "preliminary art" is defined at subdivision (a)(6) of the regulation:

"Preliminary art means roughs, visualizations, layouts and comprehensives, title to which does not pass to the client, but which are prepared 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 seller to his or her client."

We assume that your nontaxable charge for preliminary art satisfies all of the criteria provided in subdivisions (a)(6) and (b)(5) of the regulation. We also assume that the artwork from which you trace is truly preliminary art; that is, it is a rough or visualization and does not have the detail typical of finished art. In that case, we believe that your charge for the preliminary art is nontaxable regardless that you use the preliminary art by placing a separate piece of paper over it and trace the final drawing in ink. We believe that you cannot perform all of the labor to produce finished art and consider that only the charge for labor of tracing is subject to sales tax.

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