

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
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October 21, 1991

Mr. G--- R---  
E---  
P. O. Box XXXXXX  
---, CA XXXXX-XXXX

SR -- XX-XXXXXX

Dear Mr. R---:

This is reply to your September 4, 1991 letter regarding the application of sales tax to Exegetics' sale of an interpretive brochure to the State of California.

We understand that you are contracting to write, design, and print a brochure for the California Department of Fish and Game to distribute. You asked for the application of sales tax to your charge and, specifically, whether tax would apply to charges for your preliminary work.

When you make a retail sale of tangible personal property in California, the entire gross receipts of the sale are subject to tax. Revenue and Taxation Code section 6012 defines "gross receipts" to mean the total amount of the sale price of the retail sales of retailers without any deduction for "the cost of the materials used, labor or service cost, interest paid, losses, or any other expense." (Rev. & Tax Code § 6012, subd. (a)(2).) Tax applies to the entire sale price of your sale of the printed brochures with no deduction for your charge for preliminary work.

Your reference to a deduction for "preliminary work" is apparently based on subdivision (b)(4)(A)\* of Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers. That subdivision provides that, under certain circumstances specified in the regulation, separately stated charges for preliminary art are nontaxable. That provision is not applicable under the facts you state. "Preliminary art" is defined as follows:

"'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."

Under the facts you provide, you do not furnish finished art to your client. Rather, you prepare the finished art for your own use in preparing printed materials which you furnish to the client. Further, under the facts you provide, there is no evidence that you would prepare roughs, visualizations, layouts, or comprehensives before entering into the contract or before obtaining approval for preparation of the finished art.

In summary, your entire charge for the brochures is subject to sales tax. We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel

RLD:sr

\* Reg. 1540 was amended effective 10/3/2002, language of former regulation was deleted and replaced in its entirety. Annot. revised to reflect new subdivision number (a)(11). (D. Rosenthal - 1/11/05).