

**M e m o r a n d u m****100.0300**

To: San Diego - Administrator

Sacramento  
March 11, 1958

From: Sales Tax Counsel (JHM)

Subject: The T--- Company  
XXXX --- Boulevard  
--- --- X, California

Account - - XXXXX

For your information we have been considering for some time the question of the application of tax to reproduction art prepared by an advertising agency. We have come to the following conclusions:

1. Advertising agencies are the consumers of art work used in performing contracts for the production and placing of advertising in advertising media. (Mr. W. R. T--- is not in agreement with this conclusion and has had considerable correspondence with Mr. Stetson seeking to have Mr. Stetson modify his views to conform to those expressed in the Lipscomb and Hahn booklet.)

2. An advertising agency is the seller of reproduction art work prepared by its own art department for the preparation of pamphlets, booklets, etc., even though the contract creates a "true agency" under Ruling 2. The reason for this is that Section 2295 of the Civil Code provides:

“An agent is one who represents another, called the principal, in dealings with third persons.”

An advertising agency in the preparation of art work for its client is not dealing with third persons and, accordingly, cannot act as an agent with respect to that activity.

If you have any questions concerning this matter, we will endeavor to answer them for you at your request.

John H. Murray

JHM:re