

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

March 10, 1982

Mr. A--- L---
G--- D--- & I---
XXXWest --- --- Place
--- ---, California XXXXX

Dear Mr. L---:

This is in reply to your January 19, 1982 letter regarding the application of sales tax to your sales of artwork.

You stated that you render artwork and sometimes use the photo mechanical transfer (PMT) copy process to copy the artwork. You asked whether tax applies to your use of your original artwork when you make a PMT copy of original artwork to give to a client.

Sales and Use Tax Regulation 1540(d) provides in part that, "A photograph or art is regarded as having been used when a reproduction is made from the photograph or art". Tax applies to your cost of such artwork that you use. Of course, if you produced the artwork, the tax is due only on the cost of the materials (ink, paint, illustration board, etc.) that you consume in producing such artwork. You are correct that, in such case, you should not purchase for resale such materials that you consume. If you have purchased such materials under a resale certificate, you should report the use tax on the materials on line 2 of your sales and use tax return.

You believe that the client has title to the artwork immediately upon your completion and before PMT copies are made or printing takes place.

We disagree. We can regard your artwork as having been sold prior to use only if, before you use the artwork, you and your client enter into an explicit agreement that title to the artwork will pass to the client before such use. You and your client should clearly express your intentions in writing constituting a part of the contract of sale you enter into prior to your use of the artwork. We suggest the following wording:

"G--- D--- and --- (Artist, herein) and the client expressly agree that title to all artwork that artist produces for the client passes to the client at the time of completion by, and therefore prior to use by, artist."

If you provide printed matter (such as brochures, catalogs, etc.) to a client, you are entitled to regard your materials as "printing aids" for purposes of Sales and Use Tax Regulation 1541, Printing and Related Arts. The regulation provides at subsection (e)(3):

"STANDARD OF PROOF. It will be presumed, in the absence of evidence to the contrary, that special printing aids were sold by a printer to his customer prior to use if the properties are separately listed and priced either upon the same sales invoice upon which the printed matter is billed or on a separate sales invoice. The properties may be individually listed and priced or listed and priced by the quantity of each type of property sold.

"Without such a listing and pricing on a sales invoice, special printing aids will be regarded as having been sold prior to use only if it is established that the seller and the purchaser have, prior to the time that the special printing aids are used, explicitly agreed that title to such property will pass to the purchaser before the use of the property. Declarations of the parties after the transaction is completed are of little value as evidence because of their self-serving nature. The intention of the parties to transfer title prior to the use of the property should be clearly expressed in writing constituting a part of the contract of sale entered into by both parties prior to the use of the property."

As noted above, such application of tax is only when you provide printed matter to the client.

We hope this answers your question. If you need further information, feel free to write again.

Very truly yours,

R. L. Dick
Tax Counsel

RLD:jw