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March 31, 2004

BURTON OLIVER
Executive Director

Mr. D--- H. W---
D--- H. W--- A---, Inc.
XXXX --- ---
---, CA XXXXX

Dear Mr. W---:

This is in reply to your January 13, 1993 letter regarding the application of sales tax to charges for preliminary art.

You asked whether the definition of "preliminary art" is limited to the words "roughs, visualizations, layouts, and comprehensives" as listed in subdivision (b) (4) (A) of Sales and Use Tax Regulation 1540. You asked whether the definition may also include other terms commonly used by the industry, such as "concept development, preliminary design, tissues, sketches, and thumbnails."

Except for the term "concept development," we believe that a separate statement on a billing to a client for the other terms you described would be an acceptable description of preliminary art provided the agency or designer has complied with all of the requirements of subdivision (b) (4) (A) of the regulation. The term "concept development" is vague, and does not describe a tangible product. The agency must have available for audit purposes evidence of tangible "preliminary art" which was prepared for the client's approval.

Concerning charges by an agency or designer for writing copy as part of tangible personal property sold by the agency or designer, you note:

"It seems clear that tax applies to charges for final copy that is incorporated into finished art that is sold by the agency. However, copy passes through several stages. It would be difficult to develop preliminary art without some idea of a copy strategy or concept. The development of the copy platform may progress to an outline of the points to be made in the final copy. The copy outline is part of the preliminary art phase of a project that must be approved before approval is given to proceed with final art."

Given this information, you asked for our confirmation that agency charges for writing copy from concept development through copy outline are part of the nontaxable charges for preliminary art and that only the agency charges for copy that is prepared by the copywriter from the copy outline after approval is received to proceed with final art, should be considered part of the taxable charge for preliminary art.

We believe this question is answered by Sales and Use Tax Law Regulation 1543 which provides at subdivision (b) (4):

“One person may, under a single agreement, contract both to perform author, design, or art direction services, and to produce camera-ready copy or art. If, under the terms of the agreement, the client retains the right to approve the manuscript, layout, or general specifications before authorizing preparation of camera-ready copy or art, and if the author, designer, or art director does not transfer to the client title to the layouts or possession of the layouts other than for the purpose of review and approval only, then separately stated charges for performance of the services are not taxable. In the absence of specific contractual language, proof of client approval shall be evidenced by contemporaneous notation of receipt of approval in the records of the author, designer, or art director. No other proof shall be required.”

If the agency or designer follows the criteria of subdivision (b) (4), the agency or designer may exclude from the taxable measure the charge for author services.

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