

M e m o r a n d u m**100.0320**

To: San Francisco Auditing (AAV)

Date: March 27, 1987

4/1/87

From: Legal (RLD)

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New Material FolderSubject: C--- Inc.
SR -- XX-XXXXXX

This is in reply to your February 9, 1987 memorandum regarding the application of tax to charges for copy writing by C--- Inc., an advertising agency which is also the retailer of graphic arts.

Specifically, you asked whether charges for copy writing are taxable when the copy is incorporated into a mechanical which is used in media advertising. The charge for the copy writing and the charge for the mechanical are separately stated on the taxpayer's sales invoices.

As you know, Sales and Use Tax Regulation 1540 provides at subdivision (b)(4)(E):

“Effective January 1, 1975, tax applies to charges for writing copy written solely for use as a part of tangible personal property as to which the agency is acting as a seller. Tax does not apply to such charges in other circumstances or when the agency is acting as agent.

“Tax does not apply where copy is furnished to media in manuscript form.”

We have taken the position that, if an agency only sells a mechanical to a client and does not contract to furnish the media advertising, the taxable gross receipts of the sale of the mechanical include the charge for the copy writing. In such case, the agency's charge is for “copy written solely for use as a part of tangible personal property as to which the agency is acting as a seller.” (Reg. 1540, subd. (b)(4)(E), supra.) The client's furnishing the mechanical to the media does not make the charge for the copy nontaxable.

On the other hand, as noted in Tax Counsel Donald J. Hennessy's July 21, 1981 letter to Mr. P--- J---, charges for copy written solely for media (television, radio, newspaper, etc.)

advertising messages or for more than one purpose, one of which is for media advertising messages, are not taxable. Such charges must be separately stated from taxable charges. Therefore, if the agency contracts to furnish the client with both the mechanical and the placement of the advertising, the agency's separately stated charge for writing the copy is excludable from the gross receipts of the sale of the mechanical.

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

RLD:sr