

**STATE BOARD OF EQUALIZATION**

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January 27, 1992

Mr. W--- D---
XXXX --- ---
---, CA XXXXX

Dear Mr. D---:

This is in reply to your December 3, 1991 letter regarding the application of sales and use tax to charges for graphic art.

You explained that you have a client who produces custom computer programs to be run on computers as tutorials or promotional programs. You note:

“The tutorials generally are educational or promotional in nature and are generally transferred via electronic media, i.e. a computer diskette, and are run on computer devices only, i.e. computer, monitor, hard disk. No other tangible property is transferred.”

We understand that your client contracts with another person to provide your client with the graphic art. You note that the graphic art may include the production of preliminary art, finished art, consultation and research, supervision, motion picture productions, photography, and videotaping.

You interpret Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers, as applying tax only to printed art and not to art included within customer computer programming.

We disagree. Charges for producing graphic art are subject to tax whether the artwork is performed on paper or performed by inputting data onto computer media. Under section 6006, subdivision (b), of the Revenue and Taxation Code, “sale” means and includes the producing, fabricating, processing, or printing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used. The processing of customer-furnished computer media to embody graphic art or design for a consideration is a sale when such processing is performed for a consumer. (Reg. 1502, subd. (c)(4).)

If the parties wish to follow the procedure in subdivision (b)(4)(A) of Regulation 1540 to consider charges for preliminary art as nontaxable, we urge that the vendor not attempt to create the preliminary art on the computer medium which will embody the finished art. As noted in Regulation 1540, tax applies to charges for preliminary art where the preliminary art becomes physically incorporated into the finished art.

Since you note that some of the graphic art may be in the form of a motion picture or videotape, we are enclosing a copy of Sales and Use Tax Regulation 1529, Motion Pictures. Generally, tax does not apply to the transfer of all or any part of a "qualified motion picture" if the transfer is prior to the date that the qualified motion picture is exhibited or broadcast to its general audience. Subdivision (b)(1) of the regulation defines "qualified motion picture" to be any motion picture whether finished or not which is produced for exploitation in any medium or by any device for any purpose, including any industrial or educational purpose. We believe that the person who produces a motion picture or videotape for use in producing a computer program is the consumer of the motion picture or videotape. Tax does not apply to the person's charge to the client for the qualified motion picture.

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

Encs.