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April 19, 1993

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Ms. L--- H---  
Office Manager  
D--- M---  
XXXX --- ---  
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Ms. H---:

This is in reply to your March 2, 1993 letter regarding the application of sales and use tax to your charges for licensing your photographs under the following facts you described:

"We are a stock photography agency engaged in the business of licensing the use of our photos in various publications, advertisements, brochures, textbooks, etc. The client does not buy the photograph from us. Instead, they purchase limited rights to use the photograph and then return it to us when the project is complete. The photographer retains the copyright and ownership of the photograph.

"We charge instate clients state sales tax unless their projects are for resale. In these cases we have resale certificates on the premises."

Under the facts you provide, you make a lease of the photograph to the client. For your information, enclosed is a copy of Sales and Use Tax Regulation 1660, Leases of Tangible Personal Property-In General.

The applicable tax to your leases of photographs is the use tax on the use in this state of the property by the lessee. You are required to collect the tax from the lessee and give the lessee a receipt as provided in Sales and Use Tax Regulation 1686, Receipts For Tax Paid To Retailers.

Your clients should not issue a resale certificate to you for the lease of a photograph which the client will merely use to reproduce the image in property sold by the client. This is true even if the client will sell its final product to its customer.

You asked how you should report royalty income on your sales and use tax return. The amount you receive as royalties are includible in the taxable sales price of your lease. You should report the royalties on line 1 of your sales and use tax return and report the royalties at the time you receive them. (Bus. Taxes Law Guide Annot. 295.0570.)

You also noted that you send your photographs to another stock photo agency, "on spec." You asked if you were correct in accepting a resale certificate from the other agency. Yes, the other agency makes the taxable lease, and you may accept a resale certificate from that agency.

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

Enc.