

M e m o r a n d u m**330.2770**

To: Ms. Cindy Thomas
Return Review Unit

Date: June 2, 1989

From: Stella Levy
Legal

Subject:

This is in response to your May 18, 1989 telephone request for a further legal opinion as to whether sales tax is owing on the royalties received by ---.

--- is an artist who receives royalties from companies which use her designs on posters, tee shirts, and other products. She retains the copyright to her designs. The designs are transferred to the companies either as an original artwork or as a slide. In the case of original artwork, it is sent to the company which photographs it, then returns the artwork to ---. The company will later create a transparency from the slide it created. In the case of slides, they are sent to the company which creates transparencies directly from the slides, then returns them to --.

The transfer of possession of tangible personal property (slides and original artwork in this case) which is then returned to its owner, constitutes a lease of the property. (Rev. & Tax. Code § 6006.3.) Generally, a lease is taxable unless it is a lease of tangible personal property "in substantially the same form as acquired by a transferor, as to which the lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property." (Rev. & Tax. Code §§ 6006(g)(5), 6010(e)(5), Sales & Use Tax Regulation 1660(c)(2).)

Under the above cited statutes, ---'s transfer of original artwork is a taxable lease with the royalties received being the measure of tax. A lease of original artwork is not a lease of property in substantially the same form as acquired by the lessor. Her transfer of slides, however, is not a taxable transaction, assuming that she previously paid any sales tax reimbursement due on her purchase of the film processing which produced the slide. In such case, the temporary transfer of the slides to the manufacturer constitutes a lease of property in substantially the same form as acquired by the lessor.

SCL/smt:1398C