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January 25, 1995

X-----

Account No: X-----

Dear X-----,

This is in reply to your October 28, 1994 letter regarding the application of sales tax to your charges for graphic design.

You noted that you recently opened your own business to perform graphic design. Your biggest client believes that sales tax does not apply to your charge. The client publishes a newsletter to send to its customers. You generate the camera-ready art for the newsletter. You charged \$1,200 to your client for you to typeset and layout the articles, design some new advertising, and redesign advertising that appeared in a previous issue of the newsletter. You also charged \$152 for the actual camera-ready output which you purchased from a service bureau. We understand that, by "output" you refer to a hard copy printout of your computer-generated design. You asked for clarification that sales tax applies to your charge. You also asked whether tax applies to your charge when you generate work and transfer to the customer a computer disk or a cartridge containing the electronic version of the document. The customer then contracts with the service bureau directly to generate the camera-ready art. You note that the electronic version of the document is not a computer program but is a file. The customer would need a computer program to use the file.

The California sales tax is imposed upon retailers at the applicable rate of the gross receipts from the sale of all tangible personal property sold at retail in this state. (Rev. & Tax. Code § 6051.) The law defines "sale" to mean and include any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. The term also 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. (Rev. & Tax. Code § 6006.) The law specifically excludes from the definition of "sale" the fabrication or transfer by a typographer of composed type or reproduction proofs for use in the preparation-of printed matter or the fabrication or transfer of such reproduction proofs when the fabrication is for, and the transfer is to, a printer or publisher for use in printing. The exclusion does not apply to the fabrication or

transfer of a "paste-up," "mechanical," or "assembly," of which a reproduction proof is a component part. (Rev. & Tax. Code § 6010.3.)

Enclosed is a copy of Sales and Use Tax Regulation 1541, Printing and Related Arts, for your further information. As noted at subdivision (f) (5) of the regulation, tax applies to the transfer of typed matter combined with artwork in the form of a paste-up, mechanical, assembly, or camera-ready copy. When you make a taxable sale of camera-ready art, your entire charge is subject to tax including any portion of the charge attributable to typography, whether the charge is separately stated or not. (Sales and Use Tax Reg. 1541, subd. (f) (3).)

Your charge for camera-ready art is taxable whether you transfer the layout to the client on paper or as a file on a computer disk. (Sales and Use Tax. Reg. 1502, Computers, Programs, and Data Processing, subd. (c) (4).)

You asked why your auto mechanic's charge for labor is nontaxable. Enclosed is a copy of Sales and Use Tax Regulation 1526, Producing, Fabricating and Processing Property Furnished By Consumers--General Rules. As noted in subdivision (b) of the regulation, the terms "producing," "fabricating," and "processing," include labor to create or produce tangible personal property. The terms do not include operations "which constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced." In short, tax does not apply to repair labor.

You also noted that your Certified Public Accountant does not consider her charges as subject to sales tax. Enclosed is a copy of Sales and Use Tax Regulation 1501, Service Enterprises Generally. As noted in the regulation, in determining whether a particular transaction involves the sale of tangible personal property or the transfer of property incidental to the performance of a service, the Board looks to the true object of the contract. The regulation draws a distinction between charges for artistic expressions and charges for services. An accountant pays sales tax reimbursement or use tax when he or she purchases the ledgers and forms which he or she transfers to the client in performing bookkeeping or accounting services. On the other hand, under Sales and Use Tax Regulation 1541, the true object of your contract with the client is the layout which contains artwork. Sales tax applies to your charge. You may purchase for resale only that tangible personal property which you transfer to the client prior to use – for example, a computer disk or output which you transfer to the client.

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.

Cc: Oakland District Administrator – CH