



STATE BOARD OF EQUALIZATION

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March 11, 1994

BURTON W. OLIVER
Executive Director

Mr. D--- C---
C--- D---
P. O. Box XXXX
---, CA XXXXX-XXXX

Re: **SR -- XX-XXXXXX**

Dear Mr. C---:

Your recent letters to members of the State Board of Equalization regarding the application of sales tax to your charges for artwork have been referred to the legal staff for reply.

You explained that you are a humorous illustrator. You never sell your original artwork; however, you license it for use. Your letter indicates that, although you understand that tax does not apply to your charge for illustrations which you transfer solely by modem, someone has advised you that your charge becomes taxable merely if you are capable of visiting the client. You note that you now believe your charge becomes taxable if you could have physically delivered the artwork in the form of tangible personal property such as a computer disc or on paper even though you have not made such a transfer of tangible personal property.

We disagree with the advice you were given. Tax does apply to your charge to a client for your temporary transfer of illustrations embodied on tangible personal property. Such a transfer would be a lease of the illustrations. Under the Revenue and Taxation Code, "sale" includes any lease of tangible personal property in any manner or by any means whatsoever for a consideration. The term "lease" includes rental, hire, and license. (Rev. & Tax Code § 6006.3.) However, if, in fact, you do not deliver the illustrations to the client in the form of tangible personal property but merely transfer them by modem, your charge is not subject to tax even if, while performing your contract with the client, you visit the client.

As Senior Tax Auditor Ira C. Anderson noted in his November 22, 1989 letter to you, you must retain documentation to support your claim that your charge for the artwork is not subject to sales or use tax. For audit purposes, you should retain for at least four years the purchase order or other evidence of your contract and a date stamped hard copy of the document you transmit.

We hope this answers your questions; however, if you need further information, feel free to write directly to this office.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:plh