



STATE BOARD OF EQUALIZATION

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Executive Director

July 22, 1996

Mr. D--- C---
The N--- C--- S---
XXXX --- Avenue
--- ---, CA XXXXX

**Re: *Application of Sales and Use Tax to Transfer
of Intellectual Information Contained on Media
SR --R XX-XXXXXX (C--- D---***

Dear Mr. C---:

This is in reply to your April 16, 1996 letter regarding the application of sales tax to the transfer of computer information on magnetic media.

You noted a transaction where an artist would transfer artwork to a client by taking a disk embodying the artwork to the client's place of business and inserting the disk into the client's computer. The artist would then copy the artwork from the disk into the computer's permanent data storage and remove the disk.

Revenue and Taxation Code section 6051 imposes the sales tax on retailers, measured by the gross receipts, for the privilege of selling tangible personal property at retail in this state. The term "sale" means and includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) The term also includes the producing, fabricating, or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, or processing. (Rev. & Tax. Code § 6006(b).)

Under the facts you provide, we assume the artist retains possession of the disk at all times and does not otherwise transfer any other tangible personal property to the client. In such case, the Board has taken the position that the artist's performing the activity you described does not constitute a sale of tangible personal property. There is no transfer of title to the disk, and the company does not lease the disk. Since the transfer is onto the existing permanent data storage of the client's computer, the artist does not produce, fabricate, or process customer furnished materials into tangible personal property.

You noted a number of situations where the artist might insert the disk and turn possession of the disk or the computer over to the client. It bears repeating that, in order for the transaction to be nontaxable, the artist must retain title to and possession of the disk at all times. We urge that the artist not leave the computer during the transfer.

You ask whether the application of tax is the same if the transfer is a similar electronic transfer from CD-ROM and paper. The application of tax is the same. If an artist copies graphics from a CD-ROM or electronically scans graphics from a sketch into the permanent data storage of the customer's computer, the transfer is not a sale of tangible personal property, assuming the artist retains title to and possession of both of the CD-ROM and the sketch in both situations.

Finally, you asked what evidence the artist must obtain to document that the transfer was as described. The artist should obtain and retain a purchase order describing the work to be performed and retain a copy of the invoice for the charges represented by the purchase order.

As you know, Revenue and Taxation Code section 6596 provides the only basis for relief from tax when a taxpayer reasonably relies on written advice from the board. The request for advice must be in writing and disclose all relevant facts, including the identity of the taxpayer. Since you have not identified the names of any taxpayers other than yourself, only you may rely on this advice for purposes of section 6596. This opinion does not otherwise come within the provisions of section 6596. Rather, we provide the opinion only as general information.

You asked for a copy of the transcript from a Board hearing on an appeal by S--- B--- S---, Inc. You may obtain a copy of the transcript on the Board hearing conducted on November 30, 1994 on the appeal by S--- B--- S---, Inc. by sending a request by fax to Mr. Bob Barnes at (916) 324-3984. Please include your return address in your request. Other documents such as issue papers or memoranda relating to that appeal are confidential, and the Board may not disclose that information.

If you have any further questions regarding this, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:cl

cc: --- District Administrator