

120.0108.500

## Memorandum

To : Mr. Dennis Fox - MIC:92  
Program Planning Manager

Date: March 5, 1996

From : Ronald L. Dick  
Supervising Staff Counsel

Subject: Graphics On Computers

This is in reply to your August 3, 1995 memorandum regarding the application of sales tax to charges by graphic artists who create art on computers. Please excuse the delay in our reply; we have discussed this issue at length.

As you noted, we wrote an opinion to Ms. M--- D--- on April 17, 1995 and concluded that tax does not apply to her charge for creating artwork on a customer's computer on the basis that the labor she performs is not fabrication labor. Ms. Barbara Lee, San Francisco District Principal Auditor, has asked for clarification as to how tax would apply to the following situations:

- “1. The graphic artist, an independent contractor, uses the client's computer to create artwork which is saved on the client's hard disk.
  - “2. The graphic artist, an independent contractor, creates the artwork on their own computer and saves the data on a floppy disk. This diskette is then taken to the client's place of business, inserted into the client's computer, and saved on the hard drive. Some additional work may or may not be accomplished.
- “There are two separate scenarios for this situation:
- a. The diskette is retained by the taxpayer.
  - b. The taxpayer leaves the diskette, or a copy of the diskette, with the client for backup purposes.
- “3. The graphic artist, an independent contractor, creates the artwork on their own computer and saves the data on a hard disk. This hard disk is then taken to the client's location and connected to their computer by means of a cable. The data is then transferred to the client's hard drive.”

With the exception of situation 2.b., we believe tax does not apply to the graphic artist's charges in the situations noted. In situation 2.b., the graphic artist's transferring a diskette to the client results in the graphic artist making a retail sale of tangible personal property. In the other situations, we believe the artist's charge is not subject to sales tax.

We believe this situation calls for the same result the Board reached in the petition for redetermination filed by S--- B---, S---, Inc., account number SR -- XX-XXXXXX-010. We have taken the position that, when a person performs labor which is merely the operation of a client's computer system, the labor is not fabrication labor whether the client's computer is new or used. Saving work to the permanent internal storage (hard drive) of the computer is not fabrication of the computer.\*

As you noted, Sales and Use Tax Regulation 1502 provides at subdivision (c)(4) that charges for the transfer of computer-generated output are subject to tax where the true object of the contract is the output, such as artwork. Therefore, we do believe tax applies to charges for work such as you described when the artist saves the work to a medium which is typically separate from the permanent internal storage of the computer. For example, if the artist were to create the artwork and save it to a disk or print a hard copy, the transfer to the customer of that medium would be a sale of tangible personal property. The artist's transfer of artwork on a new "customer-furnished" diskette would be a taxable sale as provided at subdivision (c)(2) of Regulation 1502.

If you have any further questions regarding this, feel free to contact me directly.

RLD:sr

cc: Ms. Barbara Lee - BH

\*The customer cannot in any way gain possession of the tangible media (e.g., controlling in any way the computer while the disk is inserted) or else it is a taxable lease. DHL 5/17/97.