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October 14, 1993

Mr. G--- W---
G--- W--- Design
XXX --- ---
--- ---, CA XXXXX

Dear Mr. W---:

Re: SR -- XX-XXXXXX

This is in reply to your August 9, 1993 letter regarding the application of sales tax to your charges for work you perform as a graphic designer and illustrator.

You note that you perform most of your work on a computer, and, with rare exceptions, you bill all your time by the hour. You asked the following questions:

“If I work as a contractor for an hourly rate, and perform work through a computer program which the client then turns into a computer presentation, is my time subject to sales tax?”

You note that, in this case, you input a computer presentation file which the client has the option of showing on the computer, turning into 35mm slides, or printing out on paper.

When you perform work as an independent contractor; that is you are not a salaried employee working for an employer who makes normal payroll deductions from your wages, your charges for creating designs and illustrations are subject to sales tax. This is true regardless that you charge your customer by the hour rather than for a lump sum. Accordingly, your charge for the computer presentation file is subject to sales tax.

“If I do an illustration which a magazine buys one-time rights to use in the magazine, but I keep the illustration, is the fee subject to sales tax?”

Yes, your temporary transfer of the illustration to the magazine publisher for its use is a lease of tangible personal property. As the lessor, you are responsible for collecting use tax from the publisher and reporting and paying the tax to this Board.

“If I work as a consultant and set up specifications for a design project, such as the design of a book, is the fee subject to sales tax?”

You note that, in this case, you provide art direction and documenting specifications for the design of the book, but the client performs the actual creation and production. Your transfer of designs to your customer for the customer's use in producing a book is subject to sales tax.

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

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:plh