



STATE BOARD OF EQUALIZATION

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October 6, 1994

BURTON W. OLIVER
Executive Director

Mr. R--- H. D---
XXXX --- Avenue
--- ---, CA XXXXX

Re: **K--- C--**
SR -- XX-XXXXXX

Dear Mr. D---:

Your July 28, 1994 letter to Senior Tax Representative, T. F. Blue of the State Board of Equalization's Return Review Section has been referred to the Board's legal staff for reply. Your letter asks for the application of sales tax to charges by K--- C--- for designs. You provided the following facts:

"Ms. C--- creates artistic designs for tee shirts and for belt buckles. She has a contract for artist's services with a company that makes silk screen tee shirts and she has a design license contract with another company that makes belt buckles. The tee shirt contract provides that 'in consideration for the services to be performed' she is to be paid \$200 for each design used and in addition a commission of 5% of tee shirts sold. The belt buckle contract provides for fees of \$50 or \$75 per design.

"She had no sales or income from the tee shirts or belt buckle designs in 1992 from the second quarter to the end. In 1993 she had total receipts of \$2,825 of which \$800 was from tee shirt designs in California, \$350 for designs used and sold outside California, and \$1,675 from belt buckle designs. She had no receipts from these activities during the first quarter of 1994."

You note that, under Ms. C---' contract for the belt buckle designs, she provides her client "a right for using designs for producing belt buckles for resale"; however, she retains title to the designs. The client does not make a physical use of the designs but provides them to carvers

who look at the designs and carve wax impressions of the three dimensional buckles. The client then uses the impressions to make molds from which to fabricate the buckle. As to the tee shirt designs, Ms. C---' customer either copies the designs or scans them into a computer to produce master stencils. You believe that, under those circumstances, Ms. C---' charge is nontaxable, because her transfer is akin to a nontaxable transfer of an author's original manuscript to a publisher. You also believe that, when Ms. C---' customers scan a tee shirt design into a computer, Ms. C---' transfer of the design is a transfer of "design data" and is nontaxable. As to the belt buckle designs, you believe the designs merely furnish "visual guidance" to the carvers in the way that a manuscript furnishes "verbal guidance" to editors and typesetters.

We disagree. As you note, Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers, provides at subdivision (c):

"The tax applies to the entire amount charged by commercial artists or designers for items of tangible personal property such as drawings, paintings, designs or sketches transferred to the client, whether or not the property is suitable for display or is useful for actual reproduction by photo-mechanical or other processes."

The State Board of Equalization has long taken the position that the true object of the contract for a design is the tangible personal property produced by the designer to embody the design.. (Bus. Tax. Law Guide Annos. 100.0040, 100.0100.) The application of tax to transfers of designs does not depend on whether the customer or client handles the design. Designs are often transferred for the purpose of examination by a manufacturer or construction contractor. Tax applies to charges for such designs except when they are provided incidental to nontaxable professional services provided by licensed architects or engineers. (Cf. Bus. Tax. Law Guide Anno. 515.0380.)

Ms. C--- may put a great deal of time and effort into developing and producing a design; however, the true object of her contract with the manufacturer is the tangible personal property which embodies that design and which the manufacturer uses as a manufacturing aid to produce and sell the tee shirts or belt buckles.

We note that some of Ms. C---' sales of tee shirt designs are for designs "used and sold" outside California. Of course, the sale of the tee shirt outside California would have no bearing on the application of tax to Ms. C---' sale of designs. However, her sale of a design may be exempt from tax under Revenue and Taxation Code section 6396 if she is required pursuant to her contract of sale to ship the design to a point outside this state and does so ship the design in accordance with Section 6396.

Mr. R--- H. D---

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To receive a decision on your request to have Ms. C--- placed on an annual reporting basis, please contact the San Francisco District office located at 50 Fremont Street, Suite 1400, San Francisco, CA 94105-2234, Telephone: (415) 396-9800.

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:plh

cc: San Francisco District Administrator - BH
Theresa Blue - MIC:35