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November 4, 1992

Mr. P--- L---
Senior Manager of Taxes
State and Local
P--- C--- Inc.
XXXX --- ---
--- ---, CA XXXXX-XXXX

Re: P---
SR -- XX-XXXXXX

Dear Mr. L---:

This is in reply to your August 5, 1992 letter regarding the application of sales tax to sales to P--- of artwork used to produce posters for upcoming motion pictures and video releases. You note the following facts:

“P--- issues separate purchase commitments for preliminary art and finished art. In the preliminary art phase, purchase commitments may be issued to more than one vendor and more than one purchase commitment to each vendor. The additional commitments are contracts for additional ideas.

“A single comprehensive is finally selected. The purchase commitments issued to the vendors for preliminary art are either at their conclusion or are terminated. A purchase commitment for finished art is then issued to the vendor who produced the selected comprehensive. Camera-ready artwork with new elements is produced.”

You sent a sample of a purchase commitment and a proposed amendment to paragraph two of the “Additional Terms and Conditions” of the purchase commitment.

Existing paragraph 2.(a), Grant of Rights, provides:

“Vendor agrees that all materials prepared pursuant hereto shall be owned exclusively and in perpetuity by P---, and Vendor hereby irrevocably assigns to P-- any and all of its right, title and interest, including copyright, in and to such materials. P--- shall have the sole and exclusive right to use all materials prepared pursuant hereto, in whole or in part, in whatever manner it may desire, including without limitation, the right to cut, edit, revise, alter and/or otherwise modify such materials and the results of Vendor's services hereunder and to freely use, perform, distribute, exhibit, televise and exploit such materials and license others to do so in any and all media now known or hereafter devised.”

The proposed amendment provides:

“(a) Vendor agrees that all materials prepared pursuant hereto shall be owned exclusively and in perpetuity by P---, and vendor hereby irrevocably assigns to P--- any and all of its right, title and interest, including copyright, prior to any use by vendor, in and to such materials.

(i) Exception: the above does not apply to conceptual/creative art (herein referred to as 'Preliminary Art'). Preliminary Art are roughs, visuals, layouts, comps, etc., title to which does not pass to P---, but which are prepared by vendor solely to demonstrate an idea or message for acceptance by P--- before a Purchase Commitment is entered into by P--- for the production of finished art.”

We agree that the amendment to the terms and conditions is necessary for the vendor of the art to comply with the preliminary art provisions of Sales and Use Tax Regulation 1540.

There are, of course, other criteria which must be met before the vendor may exclude the charge for preliminary art from the taxable charge for final art. As discussed during our August 6 meeting, in order for preliminary art to be nontaxable, the transfer of possession of roughs, visualizations or other forms of preliminary art can only be temporary for review purposes only. If the client retains possession of such property, the artist's charge for the preliminary art is subject to tax as a sale.

Mr. P--- L---

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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:sr