STATE OF CALIFORNIA

100.0162

STATE BOARD OF EQUALIZATION
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August 31, 1992

Mr. G--- M---
G--- M--- D---
XXX --- --- #XX
--- ---, CA XXXXX

Dear Mr. M---:

This is in reply to your July 27, 1992 letter regarding the application of sales tax to your charges for designs under the following facts you provide:

> "I produce various types of artwork for clients, which include textile screen printers, advertising and marketing groups, business and private parties. Included in this is: discussion of concepts, preliminary roughs, finished artwork (either transferred to client as final product, or used to produce film stats or film positives in-house), and photo-retouch (restoration and alteration).
>
> "The major difficulty involves situations where I do the art and sell it to my client, who in turn use it to produce t-shirts, brochures, ...whatever. They charge their client for artwork, film, and the final product."

You note that your clients often strongly argue that your sale of the design is a nontaxable sale for resale. However, as you note, your client is generally the consumer of the artwork. Tax applies to your sale of the artwork to the client regardless that tax may apply to your client's sales of its final product and regardless that the client may subsequently transfer the artwork to its customer after your client's use of the artwork. See the enclosed copy of Sales and Use Tax Regulation 1525.1, Manufacturing Aids.

As noted in the regulation, your client may issue a resale certificate to you if the contract of sale between the client and its customer provides that title to the artwork passes to the customer prior to the client's physical use of the property in the manufacturing process. If a client insists that it is buying your design for resale, you should require the client to issue a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business. (Sales and Use Tax Reg. 1668, Resale Certificates, subd. (d).) You would not accept such a certificate in good faith if you were aware that the customer was not going to sell the artwork prior to use.

Finally, you asked for the application of tax to charges for:

"consultation (a) when it leads to artwork, (b) when it's just general discussion of possible concepts;"

In this regard, Regulation 1540 provides at subdivision (b)(4)(C):

"Effective January 1, 1975, tax applies to charges for consultation and research if the consultation or research relates solely to tangible personal property as to which the agency is acting as a seller. Tax does not apply to such charges in other circumstances, including those in which the agency is acting as agent, or where research charges relate to advertising testing even though the agency may have been the seller of tangible personal property used in conveying the advertising message."

In short, if you make a taxable sale of a design, tax applies to the total gross receipts of your sale including charges for consultation which relates to the sale. Tax does not apply to your charges for consultation which does not relate to your sale of tangible personal property.

"roughs (a) when they do not lead to final art."

Generally, charges for "preliminary art" which includes "roughs" are nontaxable only when all of the criteria of subdivision (b)(4)(A) of Regulation 1540 are followed. If you prepare roughs and transfer them to your customer and do not complete the final art, your charge for the roughs is subject to tax.

I was happy to see that you are C---'s son. I have enjoyed working with her through correspondence and by telephone in the past. If you have further questions regarding the applciation of tax to your charges, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr
Enc.