

**STATE BOARD OF EQUALIZATION**

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December 7, 1993

BURTON W. OLIVER  
*Executive Director*

Ms. D--- R---  
D--- R--- Illustration  
XXX --- Avenue  
--- ---, CA XXXXX

Re: Application of Sales Tax  
Artist Illustrations/Agency  
Civil Code Section 2295

No Permit No.

Dear Ms. R---:

This is in response to your letter dated October 25, 1993, regarding the application of tax to illustrations that you produce and sell through an artist's representative. In your letter you state:

"I am self-employed as an illustrator. I have recently started a business relationship with an artist's representative. I am not her employee, she works as an agent in helping me obtain projects. When I do a job through her, she invoices the client. I do not invoice her. She charges the client sales tax. After receiving payment from the client, she pays the tax to the State Board of Equalization, and issues me a check minus her commission amount (25% of fee). My question for you is, where do I report this income on my quarterly sales tax report? She says that her accountant says it is not resale, and she should not give me her resale number."

All retail sales in California are subject to sales or use tax unless specifically exempt by statute. (Rev. & Tax. Code §§ 6051, 6201.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) All sales are presumed to be taxable retail sales unless the retailer in good faith takes a timely and valid resale certificate from the purchaser. (Rev. & Tax. Code § 6091, Reg. 1668, a copy of which is enclosed.)

You state that you recently started working with an artist's representative who helps you get projects. The place where you report the income for these projects on your quarterly sales tax return will depend on whether the artist's representative is acting as your agent or is purchasing the illustrations on her own behalf, for resale to the clients.

An agent is one who represents another, called the principal, in dealings with third persons. (Civ. Code § 2295, Reg. 1540(a)(2)(A).) To the extent that an artist's representative acts as an agent for its clients in selling tangible personal property they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals. (Cf. Reg. 1540 (a)(1).) Therefore, for sales and use tax reporting purposes, sales of your illustrations by an artist's representative who is acting as your agent will be treated the same as normal retail sales of tangible personal property sold by you directly to the client. As the retailer under such circumstances, you are liable for the total gross receipts received from the sale of the illustrations. That is, your gross receipts from the sale is the total amount paid by the client to your agent, including both the amounts retained as a commission by your agent and the amounts transmitted to you and such gross receipts should be reported on line 1 of your sales and use tax return (total gross sales). Since as the retailer, you are liable for the sales tax, your agent should transmit the amount of the sales tax reimbursement collected from the clients directly to you, so that you can report and pay the sales tax you owe on your own returns.

However, if the artist's representative purchased the illustrations from you for resale to her clients, then you should report the full amount received by you for such illustrations sold for resale on line 1 of your return (total gross sales) and then report your sale for resale deductions on line 4 (sales to other retailers for purposes of resale). I note that, in the absence of a timely and valid resale certificate taken in good faith from the artists representative, you have the burden of proving that your sale is for resale. (Reg. 1668.)

If you have further questions, feel free to write again.

Sincerely,

Gerald Morrow  
Tax Counsel

GM/md  
Enclosures: Regulations 1540 and 1668

cc: --- --- - District Administrator