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June 16, 1994

Ms. G--- S---
 S--- D--- Associates
 XXX --- Street
 --- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Ms. S---:

This is in reply to your March 16, 1994 letter regarding the application of sales tax to charges to you by vendors of stock photographs. You provided the following facts:

"Whether it is due to lack of time or limited budget, some of our clients may choose to use a stock image instead of hiring a photographer to create a desired image. When using a stock house, we make an initial call and they research our image requests. For example, we may be looking for an image that portrays an executive sitting in a chair holding paper work for the inside of a brochure. The stock house researches the subject matter, locates an image, and we pay reproduction rights to use it in our brochure. I have enclosed an actual invoice and license-to-use form from T--- S--- I--- in --- --- to illustrate wording, etc."

The License-to-Use form grants to S--- D--- the right "For one-time reproduction rights on inside of a brochure promoting the B--- of C---. Press run up to 5K." The terms and conditions printed on the back of the License-to-Use form and the invoice require S--- D--- to return the transparencies by one month from the date of the licenses.

Since T--- S--- I--- only transfers the photographs to S--- D--- for temporary use, the transaction is a lease for sales and use tax purposes. The applicable tax is the use tax which is imposed upon S--- D--- as the lessee. The lessor, T--- S--- I---, is required to collect the tax from you and report and pay it to this Board. (Sales and Use Tax Regulation 1660, Leases of Tangible Personal Property - In General, subdivision (c).) You may purchase for resale only ingredients or component parts you incorporate into the tangible personal property which you sell to your client prior to your use of the property. For example, you may purchase the paper, ink, and

printing of the brochures for resale. As provided in Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers, at subdivision (d):

"The term 'ingredient or component part of other tangible personal property' includes only those items that become physically incorporated into the property sold and not those which are merely consumed or used in the production of the property sold. A photograph, for example, does not become an ingredient or component part of property sold merely because the image of the photograph is reproduced as part of the property sold. A photograph or art is regarded as having been used when a reproduction is made from the photograph or art."

You asked if you, in turn, also pay tax on your sale of the brochures to your clients. Yes, your retail sale of the brochures is subject to the sales tax. You may not deduct from the taxable gross receipts the amount of the use tax or sales tax reimbursement you pay on the lease or sale to you of tangible personal property such as the photographs which you consume in the process of producing the brochures.

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: --- --- District Administrator - --

R. M. Wall, Return Review Section - MIC:35