

**STATE BOARD OF EQUALIZATION**

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August 24, 1990

Mr. M--- S---
S--- A---
XXXXX --- ---
---, CA XXXXX

RE: SR -- XX-XXXXXX

Dear Mr. S---:

This is in reply to your June 14, 1990 letter regarding the application of sales tax to charges by advertising agencies. Specifically, you asked the following questions:

“1. Pamphlet No. 38 states that when acting as an agent, charges for copywriting are non-taxable. I assume that this is true for all copy that I write for my clients. Is my assumption correct, or are there certain circumstances when charges for copywriting are taxable?”

Generally, the writing of copy for a charge is the performance of a nontaxable service rather than the sale of tangible personal property. (Sales and Use Tax Reg. 1501, Service Enterprises Generally.) When you act as an agent on behalf of your client in obtaining tangible personal property from a vendor, you do not sell that property. Tax does not apply to your charge for writing copy for printed matter you obtain on behalf of the client. However, when you sell an item of tangible personal property at retail, the taxable gross receipts of the sale includes the total amount of the sale price, valued in money, without any deduction for the cost of the materials used, labor, or service cost, or any other expense. (Rev. & Tax. Code § 6012.) In this regard, Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers, provides at subdivision (b)(4)(E), Copy Writing:

“Effective January 1, 1975, tax applies to charges for writing copy written solely for use as a part of tangible personal property as to which the agency is acting as a seller. Tax does not apply to such charges in other circumstances or when the agency is acting as agent.

“Tax does not apply where copy is furnished to media in manuscript form.”

Therefore, when you make a retail sale of tangible personal property such as a paste-up, mechanical, or camera-ready copy, sales tax applies to the total gross receipts of your sale including your charge for copy writing.

“2. With recent advancements in computer technology, I am able to produce preliminary art that is extremely close to what the finished art will look like. What makes this art so realistic is that the computer is able to produce low resolution type. While this type isn’t usable as finished art because it isn’t sharp enough, it does give the client a very good idea of what an ad or brochure will look like, before the real finished art is produced.”

“Once the client approves this preliminary art, I make any necessary corrections and then send the disk from my computer to the typesetter. The typesetter uses the disk to drive the typesetting machine, instead of keying in the text by hand.

“When the type comes back from the typesetter, it requires much less hand cutting and pasting to build the finished art, then would otherwise be necessary with conventional typesetting. Also, because the finished art is very close to what the client saw as preliminary art, it minimizes client revisions to the finished art.

“My question is, how much of this process qualifies as preliminary art, and how much is considered finished art?”

You go on to state your assumption that you may exclude from your sale for the final art the portion of your charge which you believe qualifies as a charge for nontaxable preliminary art. We disagree.

Regulation 1540 defines “preliminary art” at subdivision (b)(4)(A) as “roughs, visualizations, layouts and comprehensives, title to which does not pass to the client, but which are prepared by an advertising agency, commercial artist or designer solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into or before approval is given for preparation of finished art to be furnished by the agency, commercial artist or designer to its client.”

As we understand the facts you provided, you enter the copy on the disk for use by the typographer. Under the circumstances, we believe that you do not prepare the layout which you present to the client for approval “solely for the purpose of demonstrating an idea or message for acceptance by the client.” We conclude that your total charge for the finished art is subject to tax.

Mr. M--- S---

-3-

August 24, 1990
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We hope this answers your question; however, if you need further information, feel free to write again. For your information, we are sending you a copy of the latest Pamphlet 38, Tax Tips for Advertising Agencies.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

Enc.