

Memorandum

120.0661.175

To : Mr. J. W. Cornelius, Supervisor
Audit Evaluation and Planning
MIC:40

From : Ronald L. Dick
Senior Tax Counsel

Subject: [R]
S- --- XX-XXXXXX

This is in reply to your September 17, 1996 memorandum regarding the application of sales and use tax to charges for artwork created on a computer and transferred to a client on a computer diskette provided by the client.

As you know, we have previously taken the position that, when an artist creates artwork on a client's computer and saves the artwork into the computer's memory, the artist's charge is nontaxable. We do not believe the artist thereby transfers tangible personal property to the client.

We do not reach the same result when the artist transfers the artwork to external storage diskettes or disks and transfers them to the client whether the client or the artist furnishes the removable disks or diskettes.

When the artist furnishes the disks or diskettes, the artist's charge for the disks is sales as defined at subdivision (a) of Revenue and Taxation Code section 6006. The artist's charge is for the transfer of title to or possession of tangible personal property for a consideration.

If the client furnishes either new or used disks or diskettes, the artist's charge for the work performed to create the artwork is a sale as defined at subdivision (b) of section 6006. The artist's charge is for "producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting."

RLD:sr

cc: Mr. Dennis Fox