



STATE OF CALIFORNIA

515.0001.200

STATE BOARD OF EQUALIZATION

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October 6, 1994

Dear REDACTED TEXT,

As we discussed on the telephone on September 27, 1994, your August 3 letter to the REDACTED TEXT District Office of the State Board of Equalization has been referred to the board's legal staff for reply. You asked for the application of sales tax to charges for your transfer of CAD files and video tapes based on the following background facts:

REDACTED TEXT provides computer visualization services to the planning, design and development community in California. The majority of our work entails creating 3D CAD computer files for visual modeling purposes, based upon design concepts generated by other architects. We also use photography to record facades of existing buildings, for later computer editing and incorporation into CAD files. We then produce realistic renderings of existing conditions and proposed projects.

“Recent developments within the computer industry have generated increased demand for more sophisticated renderings (animations) of proposed projects: walk-through or drive-by videos of proposed construction projects. These are fancier cousins of traditional renderings, in that they provide a pedestrian viewpoint. Basically, a camera moves around or through the computer model, allowing the viewer to have a closer, full-color view of the building interior or exterior. The rendered images include a wealth of information in scale: furniture, landscaping, even people. As the viewpoint (camera) moves, the perspective and vantage points constantly change.

“Short animations of a few seconds duration can be recorded onto floppy disks. However, due to the amount of detail existing within the CAD and model files, larger storage devices are needed to store the animations. (Typical CAD files range in size from one to sixty megabytes; animation files can require hundreds of megabytes of disk storage.) The most economical and readily usable storage format for animations is

video. The animation files can be recorded directly onto video (VHS cassettes or Hi8 tapes.”

Your letter specifically relates to a contract you have entered into with a joint venture of REDACTED TEXT and REDACTED TEXT for you to create computer models and animations for the proposed expansion of the REDACTED TEXT Airport. You sent an outline which provides the following explanation of the purpose of your work:

“This outline is a scope of work to prepare a 3-D Computer model of the airport terminal area complex, and to prepare a 3-D animation of the departure sequence to the International Terminal Complex. The purpose of the work is to create a base model that the Airport will use throughout the development of the Master Plan program to study views of the new facilities from any point within the terminal area. The intended audience for the animation is to allow briefings with the Airport Commission, Director, Airlines, FIS agencies, REDACTED TEXT Design Committee, and other interested in the design of the REDACTED TEXT Terminal Facilities Complex, the Ground Transportation Centers, and elevated roadways. The Consultant work will include three tasks, each with its product.”

We understand your responsibilities under the three tasks are as follows:

Under Task 1, you are responsible for providing a 3-D computer model of existing conditions at the airport based on existing 2-D AutoCAD drawings representing all buildings, identified on another drawing provided to you, and the airport approach roads. We understand your products are software which embodies the AutoCAD and 3-D studio files, of the base model and plots of the base model for verification of major building elements.

Under Task 2, you are responsible for providing 3-D computer models of the new buildings and transportation systems. You are to coordinate with each architect to establish a color palette to distinguish the distinct characteristics of the buildings. You are to represent the landscaping at 15 years of growth and include animated cars and buses on the road and animated people within the departure hall of the international terminal for scale reference. The products you deliver under Task 2 are also AutoCAD and 3-D Studio files for each project and plots for verification.

Under Task 3, you are responsible for preparing an animated motion picture on VHS videotape consisting of two approach sequences. The first sequence is to depict an exit from the highway through the airport access roads underneath the new REDACTED TEXT terminal and emerge onto the existing domestic terminal loop. The animation covers approximately 4,500 linear feet and is based on a car's traveling approximately 35 mph along the main approach roads. The second sequence will depict and exit from Highway 101 southbound, travel on new elevated roadways and a stop at a curb of the international terminal. A passenger then exits from the car and walks into the departure hall and to a ticket island. That animation covers approximately 4,120 feet and have variable speeds. The animation will include a soundtrack and text graphics. You are responsible for providing three copies of the video tape showing both sequences.

Sales tax is imposed upon retailers at the applicable rate of the gross receipts from the sale of all tangible personal property sold at retail in this state. (Rev. & Tax. Code § 6051.) The term “sale”

includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Rev. & Tax. Code § 6006, subd. (a).) As you know, persons engaged in the business of rendering services are consumers, not retailers, of the tangible personal property they use incidentally in rendering the service. Tax applies to the sale of the property to those persons or to their use of their property. (Sales and Use Tax Reg. 1501, Service Enterprises Generally.) Regulation 1501 provides, in part, as follows:

“The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true object of the contract; that is, is the real object sought by the buyer the service per se or the property produced by the service.”

As you know, fees charged by architects or engineers for their ability to design, conceive or dictate ideas, concepts, designs or specifications are not subject to sales tax. (Bus. Taxes Law Guide Anno. 515.0380.) The architect or engineer renders professional services, and the charge for the services is nontaxable regardless that the architect or engineer incidentally transfers a blueprint or engineering drawings as a means of conveying the plan.

Although you provide a great deal of time and labor in developing the products you provide to the joint venture, we believe the true object of your contract is the graphics embodied in the software and the animated video tapes. You do not transfer the property incidental to your performance of professional architectural services. Accordingly, unless there is an applicable exclusion or exemption, it is our opinion that your charges for the tasks are subject to sales tax as sales of tangible personal property.

Revenue and Taxation Code section 6010.6 provides an exclusion from the definition of “sale” for the transfer of a qualified motion picture when the transfer is made prior to the date that the qualified motion picture is exhibited or broadcast to its general audience. (Rev. & Tax. Code § 6010.6, subd. (a)(2).) Sales and Use Tax Regulation 1529, Motion Pictures, defines “qualified motion picture” to mean any motion picture, including a videotape, which is produced for exploitation for any commercial, promotional, industrial, or educational purpose. We believe that the animated videotape you produce and transfer to the joint venture or to the airport is for an industrial purpose, and the videotape is a qualified motion picture. Tax does not apply to your charge for the transfer of the initial videotape which embodies the qualified motion picture. Tax does apply to your charge for the additional copies you provide. (Reg. 1529, subd. (b)(3).) Tax applies to the sale to you of tangible personal property you consume in producing the qualified motion picture including the videotape you transfer tax free.

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: