



STATE BOARD OF EQUALIZATION

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January 25, 1994

BURTON W. OLIVER
Executive Director

Ms. K--- S--- - F---
S--- - F--- Design
XXXX --- Street, #XXX
--- ---, CA XXXXX

Re: **SR -- XX-XXXXXX**

Dear Ms. S--- - F---:

Your October 4, 1993 letter to Mr. John Lelas of the State Board of Equalization, San Francisco District office has been referred to the legal staff for reply. You asked whether sales tax applies to your charges under the following facts:

"My business consists of two parts an architectural drafting service and a design service. I freelance work for different companies mostly drawing construction documents of items (signs or structures) that the company has designed such as a house plan or a pylon sign. If I am requested to design a sign for example, on that occasion I will then draw up a design (pencil on vellum or computer generated) for that sign or sign system."

The California 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. Enclosed is a copy of Sales and Use Tax Regulation 1501 Service Enterprises Generally. As noted in the regulation, to determine whether a particular transaction results in a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service, the State Board of Equalization looks to the true object of the contract. If the true object of the contract is the service rendered, the transaction is not subject to sales tax even though the person rendering the services incidentally transfers some property to the client. For example, the Board's legal staff has taken the position that fees paid to architects or engineers for their ability to design, conceive or dictate ideas, concepts, designs, or specifications are not subject to tax. (Business Taxes Law Guide Annotation 515.0380.) Tax applies to the sale to the architect of materials which the architect uses in developing blueprints or plans. On the other hand, tax applies to the entire amount charged by designers for items of tangible personal property such as drawings, paintings, designs or sketches transferred to their clients. (Sales and Use Tax

Reg. 1540, subd. (c).) When a self-employed person performs drafting work for architects, engineers and other businesses based on specifications and other data furnished by those persons, the transfer of the drawings is a sale of tangible personal property and subject to sales tax. (See Albers v. State Board of Equalization, 237 Cal.App.2d 494; Business Taxes Law Guide Annotation 100.0040, 100.3010.)

When you contract to prepare drawings for architects, engineers and other persons based on specifications they have provided, you do not perform architectural services. Rather, you make sales of tangible personal property. If the architect purchases the drawings for use rather than for sale in the regular course of business, your sale is a retail sale subject to sales tax.

We understand that you are not licensed to practice architecture in this state under the authority of Business and Professions Code, Division 3, Chapter 3 (§ 5500 et seq.). Business and Professions Code section 5536 provides that it is a misdemeanor for any person to practice architecture in this state if the person is not so licensed. When you prepare renderings or drawings or other designs of structures or building decorations, you do not perform architectural services. Tax applies to your charge. If you prepare plans or specifications of buildings or structures in accordance with Business and Professions Code section 5537, such as preparing plans or specifications for a single-family dwelling of wood frame construction not more than two stories and basement in height, tax would not apply to your charge. Tax would apply to the charge to you for paper, pencils and other items you consume in producing the plans or specifications.

If you have further questions, please write again. In that case, please provide a description of the tangible personal property which you provide your client. Of course, you may send samples for our review.

Very truly yours,

Ronald L. Dick
Staff Counsel

RLD:plh

Enclosure - Regulation 1501