

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-8208

March 27, 1991

Mr. K--- R---
K--- R--- and Associates
P.O. Box XXXX
---, CA XXXXX

Re: Application of Sales Tax to Charges for Design
and Drafting Plans

Dear Mr. R---:

Your letter received by the State Board of Equalization at the beginning of February has been forwarded to me for a response. In your letter you state that on or about April 1, 1991, you intend to start a new business in ---, California. One of the primary services you will be providing is designing and drafting plans for construction, identical to the services of an architect. You ask if a design professional is required to charge sales tax and, if so, what you should do with the taxes after you have collected them.

Revenue and Taxation Code section 6051 imposes a sales tax upon retailers measured by the gross receipts from retail sales made in this state of tangible personal property. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. Civ. Code § 1656.1. All gross receipts from retail sales are presumed subject to tax until the contrary is established. Rev. & Tax. Code § 6091.

There must be a sale before a transaction is subject to sales tax. A sale means and 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(a). A sale also includes a transfer for a consideration of the title or possession of tangible personal property which has been produced or printed to the special order of the customer. Rev. & Tax. Code § 6006(f).

It is the Board's 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 the tax. Any blueprints provided under the architect's contract or commission are incidental to the architect's services and are not taxable, but tax does apply to any charges for additional copies of a blueprint transferred by the architect after the completion of the contract or commission. Business Taxes Law Guide (BTLG) Anno. 515.0380 (12/15/65; 4/25/88).

An architect's or draftsman's charges will be taxable, however, if he or she is merely transferring the ideas, designs, and specifications of another person to a tangible form such as a blueprint or design layout. In the case of Albers v. State Board of Equalization (1965) 237 Cal. App. 2d 494, the taxpayer was a self-employed commercial draftsman who maintained his own office. He made detailed drawings for architects, engineers, and business firms based upon specifications and other data furnished by the person or firm placing the order. The taxpayer was not an architect or engineer, and none of the concepts, ideas, or designs depicted in the drawings produced by him were of his own determination. Nor were any of the specifications or other details shown in such drawings determined by him. The California Court of Appeals held that the transactions involved were taxable sales of tangible personal property, not nontaxable services. In so holding, the Court stated:

“Plaintiff [the taxpayer] was not paid to conceive or to dictate any of the ideas, concepts, designs, or specifications in the drawings made by him. He simply applied his ability to the details supplied by the customer for the purpose of putting such details down on paper and thereby producing a drawing for use by the customer. In other words, the customer was purchasing the detailed drawing for his use, he was not purchasing the design or specifications pictured in the drawing.” (237 Cal. App. 2d at 497)

We infer from your letter that you are not a licensed architect. Therefore, under California law you are limited in the type of architectural services you can perform. You may prepare plans, drawings, or specifications for certain types of single-family dwellings, multiple dwellings containing no more than four dwelling units, agricultural and ranch buildings, and garages or other structures appurtenant to the foregoing buildings. Business and Professions Code § 5537. With certain restrictions you may also furnish labor and materials, with or without plans, drawings, specifications, instruments of service, or other data covering such labor and materials to be used for nonstructural or nonseismic storefronts, interior alterations or additions, fixtures, cabinetwork, furniture, or other appliances or equipment. Business and Professions Code § 5538.

If you are performing any of the above activities which are exempt from the architectural licensing requirements, your charges will not be taxable if you are paid to provide your own ideas and designs for the project. However, if you are associating yourself with an architect, engineer, or contractor for a particular project or otherwise agreeing to draw plans or designs pursuant to the specifications and data of another person, your charges for the transfer of the

specifications and designs of that person to a tangible form such as a blueprint are subject to sales tax because you are making a sale of tangible personal property rather than providing a service.

If you will be making taxable sales, you will need a seller's permit and a seller's permit number. To obtain the permit and number and to learn how to file sales and use tax returns and remit payments, you should contact you local Board office located at 546 Lawrence Street, P.O. Box 938, Quincy, California 95971-0938. The telephone number for that office is (916) 283-1070. We are enclosing Regulation 1699, entitled "Permits," for your information.

If we can be of further assistance, please write to us again.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cl

Enclosure

bcc: --- District Administrator