



STATE BOARD OF EQUALIZATION

916-445-3723

December 12, 1990

REDACTED TEXT

Re: REDACTED TEXT

Dear REDACTED TEXT:

This is in response to your letter of October 19, 1990 directed to our Culver City office. Your letter was referred to this office for reply. We apologize for the delay in our response.

You have requested our opinion, under Revenue and Taxation Code section 6596, which provides that a person may be relieved of taxes, interest, and penalties, if their failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Board.

We understand that your client, REDACTED TEXT, a sole proprietorship, sells artwork and/or negatives to REDACTED TEXT, then leases the artwork and/or negatives to a third party.

It is your analysis that the sale from REDACTED TEXT to REDACTED TEXT may be treated as a sale for resale. The lease from REDACTED TEXT to the third party would be subject to tax if REDACTED TEXT had not paid tax with respect to the acquisition of the artwork and/or negatives.

You are correct that REDACTED TEXT could pay tax on its acquisition and thus avoid tax on the lease transaction. The measure of tax with respect to the acquisition, however, would include all amounts required to be paid by REDACTED TEXT to REDACTED TEXT including the amount paid for any reproduction rights. It would appear that the artwork and/or negatives would be valueless to REDACTED TEXT unless REDACTED TEXT acquires reproduction rights. The Board has just adopted its Regulation 1543 concerning the publishing industry. In adopting the regulation, the Board rejected the contention of the industry that the amount paid for reproduction rights may be excluded from tax where there is a transfer of all right, title and interest, including the right to reproduce with respect to artwork or negatives, or where there is a leasing of such artwork and/or negatives with a limited right to reproduction.

It would appear that while the sale price from REDACTED TEXT to REDACTED TEXT would be less than the aggregate rental receipts to be derived by REDACTED TEXT from their parties, the differential would not be substantial. If REDACTED TEXT were to pay REDACTED TEXT only a nominal amount and not an amount reflective of the reproduction value of the artwork or negatives, then the Board would conclude that tax had not been paid with respect to the acquisition of the property and tax would apply to rental receipts.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

cc: Mr. H. Murray
Supervising Tax Auditor
Culver City District