

**STATE BOARD OF EQUALIZATION**

APPEALS REVIEW SECTION (MIC:85)

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July 16, 1993

Dear REDACTED TEXT:

Re: Seller's Permit for Calligrapher

This is in response to your letter of June 24, 1993, to Gary J. Jugum, Assistant Chief Counsel, wherein you requested our opinion regarding the necessity of your client who is a calligrapher to possess a California seller's permit under the Sales and Use Tax Law. Also, you request information on exemptions and exclusions applicable to calligraphers.

Under Revenue and Taxation Code Section 6066,¹ every person who wants to be engaged in business in California as a retailer of tangible personal property subject to sales tax must file an application with the State Board of Equalization for a seller's permit. A seller's permit is required for each place of business at which sales transactions are customarily negotiated with customers. Sales and Use Tax Regulation 1699(a).²

Section 6006 defines "sale" as including, but not limited to, the following:

"(b) The providing, 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.

* * *

(f) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication."

Section 6016 states that "'Tangible personal property' means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses."

Regulation 1501 involves service enterprises and in pertinent part states:

"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

1 All section references are to the Revenue and Taxation Code unless otherwise stated.

2 All further regulation references are to the Sales and Use Tax Regulations.

true object of contract; ... Tax would also apply to the sale of artistic expression in the form of paintings and sculptures even though the work of art may express an original idea since the purchaser desires the tangible object itself; that is, since the true object of the contract is the work of art in its physical form."

Regulation 1541(f) (4) states that transfers of handlettering and other artwork are subject to tax.

Clearly, calligraphy is tangible personal property because it can be seen. Although you indicate that your client has averaged less than \$1,900 in income for the period from 1991 through June 23, 1993, the calligrapher has presumably been engaged in business in California during that time and has sold or leased the calligraphy. In our view, the calligraphy is a work of art and the physical form of the calligraphy is the true object of the contract. Thus, the calligrapher must obtain a seller's permit unless there is an applicable exemption or exclusion for all sales.

Exemptions which may apply to calligraphers, if the requirements of the statutes and regulations are met, include the following:

(1) Works of art and museum pieces for public display; (Section 6365; Regulation 1586); and (2) interstate and foreign commerce. (Section 6396; Regulation 1620).

If the calligrapher had all sales fit into the aforementioned interstate commerce exemption, then it would not be necessary to obtain a seller's permit (See Regulation 1699(b)). Otherwise, a seller's permit is necessary, even if all other sales are exempt works of art for public display under Section 6365. (See Sales and Use Tax Annotations 410.0250, 410.0280, and 410.0300).

For the benefit of the calligrapher, I have included the following two pamphlets published by the Board of Equalization: 1) Your California Seller's Permit, and 2) Sales and Use Taxes: Exemptions and Exclusions. Also, enclosed are Regulations 1586, 1620 and 1699.

Section 6596 provides the only basis for relief from tax if a taxpayer relies on incorrect written advice from the Board. The primary conditions to qualify are that the request for opinion must be in writing and must disclose all relevant facts, including the identity of the taxpayer. Since you have not identified your client, or other relevant facts, this opinion does not come within the provisions of Section 6596 but rather is simply general advice regarding a set of hypothetical facts.

We hope the above discussion has answered your questions. Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

If you need anything further, please do not hesitate to write again.

Very truly yours,

Carl J. Bessent
Staff Counsel

CJB/md
Enclosures