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October 3, 1994

Mr. J--- E. K---
N---, F--- & Co.
XXX --- Street, Suite XXX
--- ---, CA XXXXX

Re: **T--- '94**

Dear Mr. K---:

This is in reply to your August 5, 1994 letter regarding the application of sales tax to charges by T--- '94 (T---, herein) for architectural signs. You provided the following facts:

"Our client, T--- '94, is a corporation organized in California in 1994. T--- '94 employs approximately 22 people. Approximately 12 employees provide services related to architectural signage; two of them have degrees in architecture. T--- '94 provides design services that are architectural in nature. They design sign systems for existing and to be built real estate projects. Their clients are generally real estate developers and, in some cases, other architects hire T--- '94 as a subcontractor to meet their architectural signage requirements. T--- '94 professionals meet with the client, conceive the project and create design alternatives. Upon completion of the project, they provide one set of blueprints to the client."

You sent an example of a T--- design of signage for what appears to be an office building's elevator bank identification, elevator corridor identification, and restrooms.

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 law defines "sale" to mean and include 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).)

Sales and Use Tax Regulation 1501, Service Enterprises Generally, provides, in part:

"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.

Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers, provides at subdivision (c):

"Commercial Artists and Designers. The tax applies to the entire amount charged by commercial artists or designers for items of tangible personal property such as drawings, paintings, designs or sketches transferred to the client, whether or not the property is suitable for display or is useful for actual reproduction by photo-mechanical or other processes.

"Tax does not apply to separate charges for preliminary art as defined in (b)(4)(A)."

You believe that charges by T--- are exempt from sales tax based on an exemption for architectural services. There is no statutory exemption from sales tax for charges for architectural services. Rather, the board's legal staff has taken the position that fees paid to architects are paid for the architects' rendering of professional services. You have not provided facts which show that T--- provides the architectural signage incidental to the providing of architectural services. Also, although you note two of T---'s employees have degrees in architecture, we assume that T--- is not licensed to practice architecture under the Architect's Practice Act (Chap. 3, Div. 3, Bus. & Profess. Code.)

Although T--- may provide substantial time and labor in developing its designs, we believe the true object of the contract between T--- and its client is the design provided by T--- in the form of tangible personal property. We believe that T--- is a retailer of designs of signs it furnishes to its clients. Sales tax applies to T---'s total charge to the client, unless T--- satisfies the criteria of subdivision (b)(4)(A) of Regulation 1540 to exclude separately stated charges for preliminary art.

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: San Francisco District Administrator - BH